

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11949
JOINT APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RED STAR MANUFACTURING CO., INC.,
MANATI PEARL WORKS, INC.,
Petitioners,

v.

38

F. GRANVILLE GRIMES, JR., Acting Administrator, Wage
and Hour Division, United States Department
of Labor,
Respondent.

Petition for Review of Order of the Administrator, Wage
and Hour Division, United States Department of Labor

*United States Court of Appeals
For the
District of Columbia Circuit*

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CLERK

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,949

RED STAR MANUFACTURING CO., INC.,
MANATI PEARL WORKS, INC.,

Petitioners,

v.

F. GRANVILLE GRIMES, JR., Acting Administrator, Wage
and Hour Division, United States Department
of Labor,

Respondent.

Petition for Review of Order of the Administrator, Wage
and Hour Division, United States Department of Labor

JOINT APPENDIX

Filed Sep 8 1953 Joseph W. Stewart, Clerk
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 11949

RED STAR MANUFACTURING CO. INC., and
MANATI PEARL WORKS, INC.,
Petitioners,

—against—

F. GRANVILLE GRIMES, JR., Acting Administrator,
Wage and Hour Division,
United States Department of Labor,
Respondent.

Petition for Review

To the Honorable, the Chief Justice and the Associate
Justices of the United States Court of Appeals for the
District of Columbia:

The above named parties, being severally aggrieved,
hereby jointly and severally petition the Court to review
and set aside a certain wage order made and entered on
the 12th day of August, 1953, for the Pearl Button and
Buckle Division of the Button, Buckle and Jewelry In-
dustry in Puerto Rico by the Administrator of the Wage
and Hour Division of the United States Department of
Labor; and in support thereof respectfully show unto
the Court that;

I

Jurisdiction

Jurisdiction to review and set aside the wage order is
vested in the Court in and by Section 10 of the Act of
Congress, known as the Fair Labor Standards Act of
1938, as amended, (63 Stat. 911, 915; 29 U. S. Code 205.

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208), which will hereinafter be referred to as "The Act".

II

Identity of Petitioners

The identity of the petitioners herein is as follows:

(a) Red Star Manufacturing Co. Inc. is a Puerto Rican corporation, engaged in the manufacture of ocean pearl buttons, with its principal offices and factory located in San Juan, Puerto Rico. This corporation has operated continuously in Puerto Rico for upwards of thirty years, and at the present time employs approximately 250 persons.

(b) Manati Pearl Works, Inc., is a Puerto Rican corporation, engaged in the manufacture of ocean pearl blanks, used in the manufacture of ocean pearl buttons, with its principal office and factory located in Manati, Puerto Rico, where the corporation presently employs approximately 150 persons.

III

Report of Industry Committee

The Administrator of the Wage and Hour Division of the United States Department of Labor, (hereinafter referred to as "Administrator"), appointed an industry committee by Administrative Order #421, dated May 8, 1952, as amended by Administrative Order #422, dated June 3, 1952, and designated said committee as Special Industry Committee #12 for Puerto Rico (hereinafter called the "Committee"), for the Button, Buckle and Jewelry Industry in Puerto Rico (hereinafter called the "Industry"), which Committee, in accordance with the provisions of the Act, was charged with the duty of investigating conditions in the Industry, and of recommending to the Administrator a minimum wage rate for all employees in Puerto Rico in such industry

Thereafter, pursuant to notice, a public hearing was held in Santurce, Puerto Rico, which began on June 24, 1952, and ended on July 1, 1952.

At the conclusion of said hearing, the Committee met in executive session on July 1, 1952, for the purpose of considering and discussing the evidence before it and on the same day made a recommendation in accordance with the provisions of the Act, establishing the minimum wage rate of 54¢ per hour for the Pearl Button and Buckle Division. The Committee's report and recommendation, together with its records, was transmitted to the Administrator in accordance with the regulations applicable to industry committees established by the Wage and Hour Division.

IV

Proceedings Before the Administrator

Thereafter, pursuant to Section 8(d) of the Act, the Administrator gave notice to all interested parties that a public hearing would be held before a Hearing Examiner designated by the Administrator, which hearing was held on October 7, 1952.

Thereafter, on the 9th day of April, 1953, the Administrator issued a document entitled "Findings and Opinion of the Administrator", in which document the Administrator reviewed the evidence presented to the Industry Committee as well as the evidence presented to the Hearing Examiner above mentioned, in which document the Administrator stated that after reviewing the record, he found that in his opinion the minimum wage rate recommended by The Committee would not substantially curtail employment in the Industry and would not give the Industry a competitive advantage over any industry in the United States outside of Puerto Rico.

By Order of the Administrator dated April 9, 1953, the Administrator caused to be published in the Federal Register of April 14, 1953 notice of proposed decision, which notice summarized the Findings and Opinion of the Administrator above mentioned, and pursuant to the Administrative Procedure Act, declared that interested parties would be given 20 days from the date of the publication of said notice to submit written exceptions to the proposed action. Thereafter, within the period prescribed by the Administrator, the Petitioners herein filed exceptions, and urged disapproval of the recommendations of the Committee for the Industry above mentioned.

Thereafter, by order dated and signed August 12, 1953, published in the Federal Register August 15, 1953, and effective September 14, 1953, the Administrator finally approved the minimum wage rate recommended by the Committee for the Pearl Button and Buckle Division of the Button, Buckle and Jewelry Industry in Puerto Rico, establishing a wage rate of not less than 54¢ per hour, to be paid under Section 6 of the Act by every employer in Puerto Rico.

V

Assignments of Errors Constituting Points Upon Which Petitioners Rely

(1) Petitioners jointly and severally respectfully petition for review of order of Respondent-Administrator, and say that on the record and proceedings before the Administrator and the decision and final order approving recommendations of the Committee, manifest errors occur and intervene to the prejudice of the Petitioners in that the Petitioners assign the following errors and each of them which they aver occur:

(1) The Committee, contrary to the provisions of the Act and the regulations issued thereunder, failed to properly investigate conditions in the industry and relief

mainly upon an economic report prepared by a representative of the Wage and Hour Division, which report was developed in part in collaboration with a representative of a private trade association representing manufacturers alleged to be in competition with your petitioners, and said report erroneously and unfairly presented alleged economic data pertaining to the industry.

(2) The Committee, contrary to the provisions of the Act and the regulations, made a recommendation wholly unsupported by any substantial evidence.

(3) That the Hearing Officer designated by the Administrator improperly and unlawfully refused to permit interrogation by Petitioners of witnesses appearing at said hearing on material and relevant points.

(4) That although Petitioners at all times made available to the representatives of the Wage and Hour Division books and records of the Petitioners showing all economic aspects of their respective businesses, the Committee and the Administrator permitted inclusion in the record of economic data of mainland companies alleged to have been in competition with Petitioners, under an agreement not to disclose the identity of any of these companies, with the result that Petitioners were unable to properly contest material issues of fact upon which the Committee and the Administrator relied in making their recommendations and report.

(5) That the Administrator failed to give timely and proper consideration to a statement from the Hon. Teodoro Moscoso, Administrator of the Economic Development Administration of the Government of Puerto Rico, which statement supported contentions of your Petitioners that the recommendation, on the basis of all the economic facts disclosed in the record, would seriously curtail employment opportunities in the ocean pearl button manufacturing industry in Puerto Rico.

(6) That the Committee erred in making its recommendation, and that the Administrator erred in accepting the Committee's recommendation insofar as they found that the proposed wage order would not seriously curtail opportunities for employment, and that no substantial evidence was offered in support of such conclusions.

WHEREFORE, the premises considered, your Petitioners and each of them pray that:

(1) A copy of this Petition be served upon F. Granville Grimes, Jr., Acting Administrator, Wage and Hour Division, United States Department of Labor, and that he be required to certify and file with the Court a transcript of the record upon which the order complained of was entered;

(2) The Court review the wage order made and issued under date of August 12, 1953, and upon such review, hold the same to be illegal and void and enter order setting aside the said order;

(3) The Court order the taking of additional evidence, and for such purposes remand the case to the Administrator with directions to hold a hearing in such manner and upon such terms and conditions as to the Court may seem proper;

(4) The Court grant such other and further relief as to it may seem just and proper.

/s/ Erwin Feldman
 Erwin Feldman,
 Attorney for Petitioners,
 Office & P. O. Address
 1350 Broadway
 New York, N. Y.

State of New York
 County of New York ss.:

ERWIN FELDMAN, being duly sworn, says that he is counsel of record in the above named case; that as such

8 A

counsel he is authorized to verify the foregoing Petition for Review; that he has read the said Petition and is familiar with the statements contained therein; that the statements made are true, to the best of his knowledge, information, and belief.

/s/ Erwin Feldman

Subscribed and sworn to before me this 8th day of September, 1953.

/s/ Leon H. Klingher

• • • •

08

UNITED STATES
DEPARTMENT OF LABOR
Wage and Hour Division
Washington, D. C.

Administrative Order No. 423

Special Industry Committee No. 12 for Puerto Rico

*Acceptance of Resignations and Appointment
of New Members*

Pursuant to authority under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C., and Sup., 201), I, Wm. R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor hereby accept the resignations of W. Willard Wirtz, as a public member and Fernando A. Villamil as an employer member of Special Industry Committee No. 12 for Puerto Rico, and appoint to serve on said Committee in their stead as public and employer members respectively, Rev. James L. Ferris of Guayama, Puerto Rico, and Armando Bras of San Juan, Puerto Rico.

Signed at Washington, D. C.
this 2nd day of July 1952.

Wm. R. McComb, Administrator
Wage and Hour Division
United States Department of Labor

* * * *

72 *W. P. Fickett, and William Spieth,*
were called as witnesses on behalf of National Association of Button Manufacturers, New York, and, being first duly sworn, testified as follows:

Direct Examination

* * * *

74 We respectfully urge that the minimum wage to be so recommended by your Committee shall equal that which applies to the pearl button manufacturing industry in the United States, namely, 75¢ per hour. This request is based upon the following reasons:
Puerto Rican Competition:

Puerto Rican made pearl buttons and made in the United States pearl buttons are sold in direct competition with each other in the United States to the cutting-up trades for use on men's shirts, sports shirts, underwear, children's wear, dresses, etc., including buttons sewn on cards and sold to consumers through chain and other retail stores.

Although buttons of ocean shell, are in general, higher priced than fresh water pearl, the two kinds of buttons are made in a wide range of qualities and price ranges overlap with the result that there is competition between the two classes.

* * * *

76 The present minimum wage in the pearl button industry in Puerto Rico and which became effective August 21, 1950, is 46¢. On January 25, 1950, the hourly minimum wage in the U. S. became 75¢. The Fair Labor Standards Act, as amended under Section 8(b), states in substance that an Industry Committee shall recommend

to the Administrator the highest minimum wage rate for an industry in Puerto Rico, with due regard to economic and competitive conditions, and which shall not substantially curtail employment in the industry, and at the same time not give the industry in Puerto Rico a competitive advantage over the industry in the United States. We believe that perhaps it might be well at this point to set forth the changes which have occurred in the hourly minimum wage applicable to the manufacture of pearl buttons in Puerto Rico since the inception of the Fair Labor Standards Act in 1938. The following tabulation sets forth this information, together with the shipments in grossage of finished pearl buttons from Puerto Rico to the United States for the years 1939-1951 inclusive, together with the number of employees in the pearl button factories for such years as we were able to compile from the Department of Labor Reports:

Finished Buttons

	<i>Grossage</i>	<i>No. of Employees</i>	<i>Minimum Wage</i>
1939	1,083,106	261	30¢
1940	1,052,619	393	
1941	1,132,050	395	
1942	591,546	358	
1943	313,673		
1944	436,602		
1945	590,959	238	35¢
1946	846,514	265	
1947	846,084	369	
1948	745,563		37½¢
1949	831,278	429	
1950	1,188,453		46¢
1951	968,571	428	

As will be noted, the production of pearl buttons has increased over the years as shown by the shipments of finished buttons to the United States. At the same time, the number of employes has increased, and for the year 1951 the number stood at 428 as compared with 261 employees in 1939.

During this 11-year span, the minimum hourly wage has increased from 30¢ to 46¢. This clearly indicates that the increase in minimum hourly wages has had no effect whatsoever in creating unemployment or curtailing production. On the contrary, there are more employees in the industry in Puerto Rico today than at any time since 1939 and they are working under minimum hourly wage of 46¢ since 1939. This, we think, must be interpreted as indicating that higher wages increase the efficiency of employees with resulting increases in production. We, therefore, believe that because of the competitive conditions existing between the mainland and Puerto Rico in the sale of these finished pearl buttons, the Puerto Rican industry does now enjoy an unfair competitive advantage over the industry in the United States because of the low minimum rate now existing of 46¢.

The decline in volume between 1950 and 1951 of both finished and unfinished buttons was due to the decline for the demand in the soft goods line in the United States during 1951.

And at that point I might say, Mr. Chairman, that these buttons, as you know, are sold for garments, and when the textile industry slows up, sales decrease, and it follows through into the button business, and if you are familiar, as no doubt you are, with the textile production in 1950 as against 1951, you know what happened.

80 As to the claims that are made concerning the inefficiency of Puerto Rican workers, we believe that these Puerto Rican workers—including many who have been in the pearl button industry in Puerto Rico for some years—are certainly as efficient as those persons engaged as learners in the United States who have never had any experience whatever in the pearl button industry and who must be paid a minimum of 65¢ per hour for only a limited time, after which this rate must be increased, as per the foregoing example.

We do not think that the efficiency of employees in the pearl button industry in Puerto Rico is so inferior to that of employees in the pearl button industry on the Mainland as to warrant such a widespread differential of 29¢ per hour in minimum wage.

• • • • •

82 To Summarize: We say that because of the competitive market conditions existing between pearl buttons made in Puerto Rico and pearl buttons made in the United States, it is most essential that the minimum wage for Puerto Rican workers be established on the same basis as are the United States workers. As we have already said, because of the lack of information given at some of the previous hearings on this minimum wage question, it is not possible for us to compare the relative efficiency of the Puerto Rican workers with those of the United States workers. However, it does appear very definitely that since 1938 the production of pearl buttons in Puerto Rico has shown sizable increases and that the increases in the minimum hourly wage since 1938 have not resulted in unemployment in the industry. On the other hand, as production has increased so has employment. Minimum wages have also increased.

Previous hearings have developed very little information regarding the labor turnover, but from what has been said by witnesses, there is every indication that

83 sizable number of employees now engaged in the Puerto Rican industry have been so engaged for a considerable period of time, thus increasing their efficiency. We know that Puerto Ricans having learned the operations of making pearl buttons in Puerto Rico, have found employment in pearl button factories on the mainland without difficulty and are considered to be efficient workers.

A differential in the minimum hourly rate between Puerto Rico and the United States does give the Puerto Rican pearl button manufacturing industry a competitive advantage over the industry in the United States, and which under the Fair Labor Standards Act is not permitted.

We respectfully urge your Committee to recommend a minimum wage for manufacturing pearl buttons in Puerto Rico of 75¢ per hour.

• • • •

91 WITNESS FICKETT: Mr. Chairman, I should like, if I may, now that we have completed our statement on behalf of the fresh water pearl button industry, there are two ocean pearl button manufacturers in New York who have asked me to read to you, for the benefit of your record, certain statements that they would like to have put in.

• • • •

The first communication I have is from B. Schwanda & Sons, 79 Madison Avenue, New York City.

I might say at the beginning that B. Schwanda & Sons are very well known in the ocean pearl button manufacturing industry. They make buttons in practically all sizes and many patterns and designs and styles, and are quite a large company.

• • • •

93 "Because of the low over-all wage rates prevailing in Puerto Rico, many of the manufacturers on the mainland can no longer compete for trade in the staple patterns used in large quantities by the shirt and blouse trade. This throws the entire remaining industry in the States out of balance and loses the price advantage in buying raw material in its original packing shipped direct from the fisheries. Not to be in a position to utilize ocean pearl shells to the best advantage for whatever size and type it is most suitable increases the cost and, consequently, the price to the consumer.

"Three of the largest ocean pearl button manufacturers are now operating plants in Puerto Rico. They are constantly increasing production. This is endangering the existence of the remaining manufacturers on the mainland, their investments in factory buildings, machinery, and equipment, and of greater importance is the hardship that it would impose on many workers in small communities, some of whom would not only lose their jobs but their homes, as well.

94 "In deciding a minimum wage rate in the low wage area, one must always bear in mind that the ceiling wage is just as important a factor and bears a relative position. The present 75-cent minimum wage on the mainland does not establish a maximum. This is influenced and controlled to a great extent by the high wages paid in industries in whole or in part engaged in war work and the building trades and other industries. With the shortage of help, it is impossible to start even inexperienced help at the minimum rate.

"It is our honest belief that a 75-cent minimum wage in Puerto Rico, with its much lower ceiling wage rate than prevails on the continent, will result in an over-all average that will still be considerably lower than the average over-all wage rate paid in the same industry on the continent.

"We are fully aware of some of the slight increases in production costs in Puerto Rico as against the mainland. These have been presented at previous hearings. However, this time they should be considered at their correct and true value and it should be found that the sum total of these extra costs is insignificant compared with the large benefits derived from the difference saved between the wages paid in Puerto Rico as against the wages paid on the mainland.

* * *

125 BY MR. VILLAMIL:

Q Mr. Fickett, have the sales of your product increased or decreased within the last, say, five years?

A Yes, they have decreased.

Q Do you attribute that to the competition from the Puerto Rican industry? A In part.

* * *

133 WITNESS FICKETT: A very large percentage, you know, of the cost of making a button is direct labor.

CHAIRMAN SNYDER: I would say—and I would like to ask Mr. Spieth if he wouldn't agree with me—that at least 70 or 75 per cent of the cost of making a fresh water button is direct labor. Isn't that right?

134 WITNESS SPIETH: Not less than 70 percent.

MR. JUDGE: Excluding the cost of raw materials?

WITNESS FICKETT: Yes. Excluding the cost of raw materials, wouldn't you say?

CHAIRMAN SNYDER: I don't know what that means.

WITNESS FICKETT: That means you take—

CHAIRMAN SNYDER: Mr. Spieth, can you clarify that? That's 70 per cent of what?

WITNESS SPIETH: 75 per cent of the cost of the finished button is in direct labor.

WITNESS FICKETT: That's right.

MR. WIRTZ: Only if you exclude the raw materials cost.

CHAIRMAN SNYDER: What other costs are there besides the raw material costs and labor, direct labor?

WITNESS SPIETH: Well, administrative, freight, and deliveries.

CHAIRMAN SNYDER: That's the other 25, administrative, freight, and selling?

WITNESS FICKETT: That's right.

* * * *

139 MR. WIRTZ: I take it, just to complete the picture of Mr. Fickett's comparison, there should be included a reference to your transportation costs, since you have higher transportation costs on the mainland, rail transportation, than water transportation from here to the mainland.

WITNESS FICKETT: That is correct. You not only have it on the finished product but you have it on the transportation cost of the shell from the shell gathering areas to the cutting plants or the finishing plants.

* * * *

145 MR. OLIVERAS: Would you say, Mr. Fickett, that after the soft goods situation is over, I mean the decline in the demand for soft goods on the continent is over, that in all probability there will be an upward trend of sales for everybody in the continental United States, including Puerto Rico?

WITNESS FICKETT: I am not a prophet, sir, and I cannot prophesy. But I will say to you this: that within the last month the textile market has picked up very perceptibly in New York, which means that there will be more and more piece goods sold. They are already sold up into the third quarter of this year; some up into the fourth quarter. And as that volume increases, we hope and expect there will be, of course, more buttons used.

* * * *

159 MR. JUDGE: Do you know when the 75-cent minimum became effective in January 1950, whether it affected the fresh water pearl button industry?

WITNESS FICKETT: Mr. Spieth can tell you that, because he has some experience with it.

MR. JUDGE: I assume that it caused quite an impact in that industry.

160 WITNESS SPIETH: It naturally did, raising it from 40 to 75 cents. That started a trend toward technological improvements.

CHAIRMAN SNYDER: You were actually paying under 75 cents when the law went into effect, and then you were required by the law to increase your rates?

WITNESS SPIETH: That's correct.

CHAIRMAN SNYDER: To a considerable extent? Was it as low as 40?

WITNESS SPIETH: I believe there were some individuals who were on the 40-cent rate.

* * * *

179 *Mr. A. F. Qetting*

a witness appearing in behalf of the Red Star Manufacturing Co. Inc. having first been duly sworn, was examined and testified as follows:

Direct Examination

* * * *

196 Q What has been the picture in the industry over the past years, that is for instance, take from
197 about '46 on. Has it been a profitable business since then? A We have not been losing. We are not in business to lose money, but it has not been an extremely profitable one.

Q Nevertheless your company did come in 1948, I believe—one company came in. A Another company came in 1948.

Q They captured approximately half the gross sales?

A I wouldn't say that. They were replacing other sources of supply that they previously had. That company through its affiliate on the continent had contacts with—

Q When did that firm go out of business in the Philippines? A I don't remember.

Q It must have been in the early '40's? A Yes.

Q They set up here in '48, yet in '51 I see you have a gross export sale of six hundred nineteen thousand, and the other company has a gross net sales of one hundred twenty-five thousand, and they, the new company, has a gross sale of five hundred fifty-four thousand. That's rather remarkable, I think, when this has been referred to as a dying business for a new firm to come in. A It is not a completely new firm.

Q It is a new firm for Puerto Rico. A But not for the industry.

CHAIRMAN SNYDER: I'm not sure you called it a dying business; did you?

THE WITNESS: I don't remember having said that.

* * * *

225 Q Would you give us an estimate of what a 5-cent increase might mean in your total employment bill? Have you prepared anything on that basis?

A I haven't prepared anything, no. I might be able to make a guess.

Q Twenty-nine percent of your total production costs, at the present rate of forty-six, if it were to go up to fifty, fifty-one, do you have any idea what percentage that would be? A Five cents would be a little bit less than 10 percent of that but granting that it is going to affect piece workers, and those earning already
226 in the higher brackets as well, it might result in a 10 percent increase in our wages.

Q Ten percent making it 39 percent, and your prospects are not much different from 1951? A No.

Q Would that in itself force you to reduce employment? A It would definitely force us to take some steps to eliminate the marginal employees.

Q Those who are less efficient? A Yes.

Q Would you replace them with efficient workers? A If we could get them. If we had to increase our efficiency by eliminating some less efficient workers, and at the same time we were unable to replace them with others of greater efficiency, we would have to curtail our production.

* * *

231 Q How could you reconcile this statement that the rate of wage is responsible for the decrease in employment of people with your statement that plastic has taken the place of the product you manufacture? A

Well, naturally if our production has gone down
232 there has to be a decrease in the employment that produces that production, but there is still another factor that hasn't been brought out yet, I don't believe. Before the Federal Wage Hour law went into effect, our company did mainly hand operations. * * * When the Wage Hour law went into effect and our wage rates were increased from, I believe, 18 and $\frac{3}{4}$ cents prevailing at the time to 25 cents, which was the first minimum established under the law, we were compelled to scrap our old hand machinery, go out and buy and install automatic machinery in order to partially offset the increased costs, labor cost of our production. * * *

* * *

287 Q Oh, yes, of course. There is a degree of turnover.

What about excise taxes; do you have to pay excise taxes here on any of your supplies or materials? A Not any more.

Q That is gone? A Yes. We have an industrial exemption on supplies and parts for industrial machinery.

CHAIRMAN SNYDER: That has nothing to do with the general exemption statute for income taxes?

THE WITNESS: No. It is merely an excise tax exemption. I believe Mr. Fickett has in mind our testimony in the last hearing where we had an added cost of doing business in Puerto Rico because the then existing excise tax law, and at that time it was true, but since then the law has been amended and that burden has been removed.

MR. FICKETT: Yes, that is exactly, Mr. Chairman, what I had in mind.

CHAIRMAN SNYDER: Well, that is the situation.

MR. FICKETT: I am glad to know that, because in the findings and opinion of the Administrator in Washington, when he formally approved the 46-cent minimum that your committee recommended, he mentioned, among other reasons for that, the item of excise taxes.

CHAIRMAN SNYDER: That no longer exists.

• • • •

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Leon H. Kraft

was called as a witness on behalf of the Manati Pearl Works, and having been first duly sworn, testified as follows:

Direct Examination

• • • •

315 Q I sometimes wonder why, simply on the basis of common sense, you would continue to operate from year to year at a loss. A Yes.

Q I imagine you would reach the end of the rope sometime. A I think so. However,—

CHAIRMAN SNYDER: Hope springs eternal.

THE WITNESS: That's right. In conjunction with

this I would like to remind you people that in setting up a factory we anticipated a loss to start with. The nature of the business demands it. I don't think you can go to any spot under the sun and set up an ocean pearl or even a fresh water pearl factory.

BY MR. FICKETT:

Q And you had a period of time that that loss would extend over? A Well, under normal conditions, possibly a year or two years.

* * * *

316 Q And you have had such situation confronting you for three years out of four? A Yes, the first two years, as we explained—

Q But the increase, if there should be one in the minimum wage, would not necessarily discontinue your cutting operations here? A I did not intimate that it would necessarily discontinue the cutting operations except those who had to be subsidized to the existing minimum.

Q And that, of course, would depend upon what the minimum was? A Yes.

* * * *

334 CHAIRMAN SNYDER: We have submitted to us from the Puerto Rican American Button Company, dated June 26, 1952, a certificate by the Secretary Santiago Figueroa, enclosing copies of the profit and loss statements for the years ending June 30, 1947, June 30, 1948, June 30, 1949, June 30, 1950, and June 30, 1951.

* * * *

335 MR. JUDGE: Mr. Chairman, I wonder if you just might read the new profit figures into the record? Is there only one company?

CHAIRMAN SNYDER: Mr. Sternback, would you like to do it?

MR. STERNBACK: Surely.

The statement for the year ending June 30, 1947, net sales, \$249,939.69; net profit for the year after taxes, \$4,546.54.

The year 1948, net sales, \$229,354.89; net loss for the year, \$2,044.34.

The year 1949, net sales, \$255,447.54; net profit for the year, \$577.31.

1950, net sales, \$311,684.96; net loss, \$23,711.04.

1951, net sales, \$400,946.91; net profit, \$19,264.27.

* * * *

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Eliezer Curet Cuevas,

was called as a witness on behalf of the Unions of Workers at the Red Star Manufacturing Company, Puerto Rican American Button Company, and Manati Pearl Works, and, being first duly sworn, testified as follows:

Direct Examination

* * * *

339 The pearl button industry in Puerto Rico enjoys a considerable competitive advantage since its wage rates are half what they are for the industry in the United States. At the same time, the efficiency of the workers in the industry is about the same as that of the United States workers. One reason why the employers claim that the efficiency is low is because of a supposed large turnover of employees. The membership records of the Union at the Red Star Manufacturing Company show that 85 per cent of the employees have worked at the company for more than four years. Out of 170 employees, 35 have been with the company for more than 10 years.

* * * *

341 This Union would like to present to the Committee, the three Unions would like to present to the

Committee their opinion as to the minimum wage that should be recommended. Our objective is to arrive in the near future at the 75-cent minimum. However, 342 we think that with the data which has been presented to us we cannot prove that the industry can pay 75 cents right now. We are not saying that it cannot pay 75 cents; we are saying that we cannot prove it with the data presented to us, because we do not have all the data.

We also want to consider the fact that there is one of the companies which is relatively new and should be taken into consideration on a different basis from the other two which are older.

We therefore ask this Committee to fix a minimum wage of 65 cents, which we believe all of the three companies can pay.

Our intention is to let the industry develop more so that in perhaps two more years when the next committee comes, we can ask for 75 cents.

We think that the minimum of 65 cents would cause an increase in the wage bill of 20.6 per cent, as the table on page 46 of Administrator's Exhibit No. 1 shows.

Since labor costs represent, as an average for the industry, 28 per cent of the total cost, that would mean an increase in the total cost of the industry of somewhere between 6 and 7 per cent, which we believe the industry can pay. We believe that the industry can stand such an increase.

CHAIRMAN SNYDER: How would it affect their profits picture, accepting their figures for the moment?

THE WITNESS: I do not have their complete financial information. You see, we only have one year here. But when you take the profits reported for the Puerto Rican American Button Company in the report which appears here, they showed losing \$3,000, and then 343 it comes out that for the whole year he was making a profit of \$19,000. Then the previous year

they made a profit of \$23,000, and that is the smallest company in the industry.

• • • •

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Adm. Exh. #1

UNITED STATES DEPARTMENT OF LABOR

Wage and Hour and Public Contracts Divisions

The Button, Buckle and Jewelry Industry
in Puerto Rico

Division of Wage Determinations

June 1952

400

Foreword

On May 13, 1952, the Administrator of the Wage and Hour Division, pursuant to the provisions of the Fair Labor Standards Act of 1938, as amended, appointed Special Industry Committee No. 12 for Puerto Rico. It is the duty of this Committee to investigate economic and competitive conditions in various industries in Puerto Rico and in each industry to recommend to the Administrator the highest minimum wage (not over 75 cents an hour) which it determines will not substantially curtail employment in the industry. The Act further directs that the Committee shall not recommend a minimum wage rate which will give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

The statistical and other economic data given in the present report have been assembled for the purpose of assisting the Committee in the performance of its statutory functions in connection with its consideration of a minimum hourly wage rate for the Button, Buckle, and Jewelry Industry in Puerto Rico. This study does not, however, purport to constitute a complete economic analy-

sis of the industry, but contains such currently available information as is believed to be of interest to the Committee in its investigation of the industry's economic and competitive conditions.

The report was prepared by Hans G. Reif under the general supervision of Thomas J. Judge, Chief, Branch of Minimum Wages and Homework.

Robert G. Gronewald, Director
Division of Wage Determinations

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* * , *

As a result of the recommendations of Special Industry Committee No. 6 for Puerto Rico which met in December 1949, the Button, Buckle, and Jewelry Industry is

presently classified for wage order purposes into four separable divisions. The wage rates recommended by this Committee for each of the divisions were approved by the Administrator and incorporated into a wage order which became effective August 21, 1950. The rates provided in this order are as follows:

<i>Division</i>	<i>Minimum Wage Rates</i> (cents per hour)
(1) <i>Pearl Button and Buckle Division.</i>	
The manufacture of buttons and buckles from ocean pearl or natural shell.	46

* * * *

406 *Pearl Button and Buckle Division*

Ocean pearl buttons

There are three companies engaged in the manufacture of ocean pearl buttons and blanks in Puerto Rico. Two companies are located in Santurce, a suburb of San Juan. One began business in Puerto Rico in 1923, and the other in 1935. The third company is located in Manati where it commenced operations in the early part of 1948.

The companies produce mainly 18, 20, and 22 line buttons for use on men's shirts. The most recently established firm manufactures principally button blanks, shipping a large part of its production to one of its mainland affiliates for finishing. The two older firms cut blanks and perform finishing and polishing operations on most of their manufactures in Puerto Rico.

Production

Processing operations on ocean pearl buttons consist of soaking the shells, cutting blanks by machine, sorting the blanks to obtain similar sizes, grinding the blanks, cutting a pattern on them and drilling the holes, sorting

the buttons by grade, and polishing, drying, inspecting and packing them. The most important occupation numerically is that of blank cutting, with grinding, sorting, and drilling next in importance.

Several of these operations involve the use of automatic or power-driven machinery and it is understood that the type of equipment used in producing ocean pearl buttons in Puerto Rico is the same as that employed on the mainland.

407 Practically all shells used in the manufacture of ocean pearl buttons are imported and enter the United States duty-free. Both Puerto Rico and mainland manufacturers secure their raw materials from importers in New York. Mother-of-pearl shell, a flat, relatively soft shell, is the ideal raw material for the ocean pearl button industry. This shell is fished in the relatively deeper waters of the Pacific Ocean near Indonesia and in the Australian area.

During World War II, when mother-of-pearl was no longer available, trochus shell from the shallow coastal waters of Australia and the Fiji Islands, and Red Sea trochus shell which is fished in the shallow waters around the Red Sea, were introduced as substitutes. The trochus shell is considerably cheaper than mother-of-pearl, but its conical shape, hardness and brittleness necessitate use of a larger quantity of shell to produce one gross of buttons than with mother-of-pearl shell.

In the early postwar period, 1946-1948, more than 80 percent of shipments of manufactured shells from the mainland to Puerto Rico consisted of shells other than mother-of-pearl (Table 1). Since then, the value of shipments of shells to Puerto Rico has risen substantially, while the value of foreign imports of unmanufactured shells into the United States declined between 1947 and 1950, increasing again slightly in 1951. This would indi-

cate that shipments to Puerto Rico since 1949 have consisted of a larger proportion of mother-of-pearl and other high grade shells than in the immediate post-war period.

The quantity of shells shipped to Puerto Rico remained at about the same level in 1946 and 1947, but increased to almost 1.8 million pounds in 1948. The sharp decline in shipments in 1949 was principally due to the large inventory of raw materials held by Puerto Rican manufacturers. Shipments rose to more than 2.5 million pounds in 1950, and continued at a comparable rate for the first six months in 1951.

The Puerto Rican ocean pearl button industry is almost completely dependent upon the mainland market. Virtually the entire output of the three companies is shipped to the mainland for distribution. Shipment figures to the United States, therefore, provide an accurate indication of production on the Island (Table 2).

Shipments of finished pearl buttons which amounted to about 846,000 gross in 1946, remained at that level in 1947, but declined in 1948 by about 100,000 gross. In 1949, shipments rose again to approximately 831,000 gross, with the average value per gross declining \$.15. During 1950, shipments of ocean pearl buttons to the mainland exceeded all previous years amounting to 1,188,453 gross valued at \$1,193,067, but declined in 1951 to 968,571 gross. However, the average price per gross increased from \$1.01 in 1950 to \$1.32 in 1951 so that the value of 1951 shipments was about \$90,000 above the previous year's. In this connection it should be noted that a sharp recession occurred in the mainland soft goods market in the latter half of 1951.

Shipments of button blanks from Puerto Rico to the mainland rose from 4,500 pounds in 1946 to almost 37,000 pounds in 1947, but declined to about 23,000 pounds in 1948. However, between 1947 and 1948, the average value

per pound of blanks rose very sharply from \$1.03 to \$1.91. In the following two years, as the newest firm began full operations, shipments of button blanks increased rapidly, and reached 294,000 pounds valued at about \$515,000 in 1950. As was the case with finished buttons, shipments of button blanks declined in 1951 to 170,000 pounds, while the average value per gross rose \$.15 above 1950.

Table 1. Shipments of mother-of-pearl and other unmanufactured shells from the mainland to Puerto Rico, 1946 - July 1951

Year	Total			Mother-of-pearl			Other shells		
	Quantity pounds	Value Dollars	Average Value per pound	Quantity pounds	Value Dollars	Average Value per pound	Quantity pounds	Value Dollars	Average Value per pound
1946	1,676,916	\$191,591	\$.114	313,905	\$54,409	\$.173	1,363,011	\$137,182	\$.101
1947	1,615,972	180,880	.112	117,288	32,332	.276	1,498,684	148,548	.099
1948	1,795,968	241,965	.135	225,773	57,292	.254	1,570,195	184,673	.118
1949	1,019,597	280,095	.275						
1950	2,523,475	928,995	.368						
1951									
January	155,233	71,846	.463						
February	235,728	114,667	.486						
March	168,729	79,673	.472						
April	129,891	56,581	.436						
May	314,785	109,722	.348						
June	184,988	169,816	.918 ^b						
July	74,152	67,059	.904 ^b						

Source: U. S. Dept. of Commerce, Bureau of the Census, *United States Trade in Merchandise and Gold and Silver with United States Territories and Possessions (except Alaska and Hawaii), 1946--July 1951*.

^a Not reported separately after 1948.

^b Includes a small quantity of selected, very high-priced shell.

^c Shipments not reported after July, 1951.

409 Table 2. Shipments of finished and unfinished ocean pearl or shell buttons from Puerto Rico to the United States, 1946 - February 1952

Year	<i>Finished ocean pearl or shell buttons</i>			<i>Unfinished ocean pearl or shell buttons</i>		
	<i>Quantity</i>	<i>Value</i>	<i>Value per</i>	<i>Quantity</i>	<i>Value</i>	<i>Value per</i>
	<i>Gross</i>	<i>Dollars</i>	<i>gross</i>	<i>pounds</i>	<i>Dollars</i>	<i>pound</i>
1946	846,514	\$ 921,623	\$1.09	4,500	\$ 4,670	\$1.04
1947	846,084	863,909	1.02	36,639	37,854	1.03
1948	745,563	769,348	1.03	23,312	44,631	1.91
1949	831,278	729,424	.88	124,367	259,842	2.09
1950	1,188,453	1,193,067	1.01	293,966	514,542	1.75
1951	968,571	1,281,393	1.32	170,173	323,313	1.90
January	100,107	111,882	1.12	7,002	14,342	2.05
February	75,099	99,655	1.32	11,807	22,719	1.92
March	142,010	188,990	1.33	22,734	41,717	1.84
April	85,020	118,377	1.39	9,038	17,694	1.96
May	84,723	144,505	1.70	13,718	31,667	2.31
June	88,940	108,203	1.22	10,111	18,968	1.88
July	32,340	35,105	1.08	10,751	19,254	1.79
August	82,348	101,818	1.24	11,532	25,404	2.20
September	56,831	72,035	1.27	9,145	17,609	1.92
October	40,486	49,433	1.22	11,979	22,200	1.85
November	97,794	139,319	1.42	35,009	58,733	1.68
December	82,873	112,071	1.35	17,347	33,006	1.90
1952						
January	37,847	58,853	1.55	4,797	9,182	1.91
February	102,502	146,320	1.43	25,729	42,566	1.65
March	37,883	107,155	1.45	33,004	60,274	1.83
April	71,699	95,309	1.33	15,742	30,108	1.91

Source: United States Dept. of Commerce, Bureau of the Census, Foreign Trade Reports, *Shipment of Merchandise from Puerto Rico to the United States, 1946—February 1952.*

410 The three firms comprising the ocean pearl button industry in Puerto Rico reported the following shipments to the mainland during 1951:

	Quantity	Value	Average value
Finished buttons			
Red Star Manufacturing Company, Inc.	544,333 gross	\$ 688,427.77	\$1.26 per gross
Manati Pearl Works, Inc.	256,433	239,867.00	0.94
Porto Rican American Button Co.	254,730	288,441.21	1.11
Total	1,055,496	1,211,735.98	1.15
Button blanks			
Manati Pearl Works, Inc.	159,808 pounds	\$ 299,325.00	\$1.87 per pound
Porto Rican American Button Co.	23,286	44,292.55	1.90
Total	183,094	343,617.55	1.88

The variations between the quantities of finished buttons and blanks shipped as listed by the Department of Commerce and the companies may be due in part to a difference in time in the recording of the shipments.

In the years immediately preceding the war, Puerto Rican shipments of ocean pearl buttons to the mainland constituted approximately 13 percent in quantity and 10 percent in value of total domestic ocean pearl production including Puerto Rico (Table 3).

During 1944-1946, Puerto Rico's share of the mainland market increased to almost 20 percent, but by 1948, the position of Puerto Rican manufacturers had reverted to the pre-war level in regard to quantity; although the average value of the Puerto Rican output was lower relative to the average value of mainland manufactures than between 1940 and 1942. During 1949 and 1950, Puerto Rican output amounted to 17 percent of the total United States production of ocean pearl buttons; and, considering the substantial quantities of button blanks shipped to the mainland at the time, it appears likely that Puerto Rican manufacturers again achieved or surpassed the favorable position held during the late years of the war. Moreover, a comparison of total United States production of both fresh water and ocean pearl buttons with Puerto Rican shipments to the mainland indicates that in 1950, the latter accounted for 10 percent in quantity and 8.2 percent in value, a substantial increase over the pre-war level.

Employment

A survey made by the Wage and Hour Division in January 1952, indicated a total of 428 employees engaged in the manufacture of ocean pearl buttons in Puerto Rico. The same number of workers were employed in this industry in November 1949, when it was considered by Special Industry Committee No. 6.

Table 3. Comparison of quantity and value of pearl or shell buttons produced on the mainland of the United States and shipments of pearl buttons from Puerto Rico to the mainland, 1939-1950
(Quantity and value in thousands)

Year	Mainland fresh-water shell buttons				Mainland ocean pearl buttons				Puerto Rican pearl or shell buttons ^b				Percentage of Puerto Rican Shipments of total			
	Value		Gross		Value		Gross		Value		Gross		fresh water shell and ocean pearl buttons		ocean pearl buttons	
	Gross	Value	Gross	Value	Average value per gross	Gross	Value	Average value per gross	Gross	Value	Average value per gross	Quantity	Value	Quantity	Value	Quantity
1939	18,396	\$7,067	10,139	\$2,429	\$.24	7,174	\$4,174	\$.58	1,083	\$ 464	\$.43	5.9	6.6	13.1	10.0	
1940	16,743	7,022	8,860	2,434	.27	6,831	4,141	.61	1,052	453	.43	6.3	6.5	13.3	9.9	
1941	18,577	8,986	10,020	2,972	.29	7,425	5,337	.72	1,132	677	.60	6.1	7.5	13.2	11.3	
1942	17,542	10,057	11,535	4,980	.43	5,365	4,533	.84	592	544	.92	3.4	5.4	9.9	10.7	
1943	11,342	7,780	8,078	3,679	.46	2,950	3,792	1.29	314	309	.98	2.8	4.0	9.6	7.5	
1944	10,497	7,383	8,025	4,306	.54	2,035	2,602	1.28	437	475	1.09	4.2	6.4	17.7	15.4	
1945	12,017	8,784	9,028 ^a	4,845 ^a	.54	2,398	3,286	1.37	591	653	1.10	4.9	7.4	19.8	16.6	
1946	13,979	13,086	9,670	6,528	.68	3,462	5,636	1.63	847	922	1.09	6.1	7.0	19.7	14.1	
1947	14,187	16,932	8,254	8,166	.99	5,087	7,902	1.55	846	864	1.02	6.0	5.1	14.3	9.9	
1948	12,530	14,753	6,810	5,397	.79	4,974	8,587	1.73	746	769	1.03	6.0	5.2	13.0	8.2	
1949	9,641	11,207	4,720	3,696	.78	4,090	6,782	1.66	831	729	.88	8.6	6.5	16.9	9.7	
1950	11,932	14,507	4,940	4,075	.82	5,804	9,239	1.59	1,188	1,193	1.01	10.0	8.2	17.0	11.4	
1951	10,169	12,801	4,535	3,805	.82	4,665	7,715	1.65	969	1,281	1.32	9.5	10.0	17.2	14.2	

Source: United States Department of Commerce, Bureau of the Census; United States Department of Interior, Fish and Wildlife Service

^a Estimated

^b Does not include button blanks

^c Not yet available

Table 4. Production costs of two Puerto Rican and two mainland manufacturers of 18, 20, and 22 line ocean pearl buttons, 1952
(per gross)

Item	Puerto Rican Firm A				Mainland Firm A				Mainland Firm B							
	18 line		20 line		18 line		20 line		18 line		20 line					
	Puerto Rican Firm A	Puerto Rican Firm B	18 line	20 line	18 line	20 line	18 line	20 line	18 line	20 line	18 line	20 line				
Quantity of shell necessary to produce 1 gross	18 line	20 line	22 line	and 22 line combined	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus	Mother-of-pearl chus				
Cost of shell (incl. freight and insurance)	—	—	—	—	.5 lb	1.2 lb	.7 lb	1.6 lb	.9 lb	1.9 lb	1.0 lb	1.5 lb	1.06 lb	1.8 lb	1.14 lb	2.35 lb
Direct labor	\$.580	\$.750	\$.870	\$.7200	\$.355	\$.312	\$.497	\$.416	\$.639	\$.494	\$.700	\$.495	\$.742	\$.594	\$.798	\$.775
Shell handling	.265	.275	.285	.4203	.566	.470	.579	.483	.623	.509	.655	.414	.685	.431	.716	.453
Blank cutting	.010	.010	.010	.0098	.010	—	—	—	—	—	.025	.034	.025	.041	.026	.053
Slicing knot blanks	.110	.120	.130	.1980	.290	.240	.300	.250	.320	.260	.240	.180	.240	.190	.250	.200
Blank sorting	—	—	—	.0150	—	—	—	—	—	—	.150	—	.180	—	.200	—
Blank splitting	.0175	.0175	.0175	.0170	.026	.025	.0275	.0265	.030	.028	.040	.040	.040	.040	.040	.040
Grinding-belt	.020	.020	.020	.0200	.050	—	.060	—	.065	—	.040	—	.040	—	.040	—
Grinding-convex	.010	.010	.010	.0250	.043	.043	.045	.045	.048	.048	.020	.020	.020	.020	.020	.020
Barrys (facing & drilling)	.030	.030	.030	.0290	—	—	—	—	—	—	—	—	—	—	—	—
Polishing and bleaching	.025	.025	.025	.0300	.057	.062	.057	.062	.060	.063	.045	.045	.045	.045	.045	.045
Sorting	.005	.005	.005	.0090	.030	.050	.030	.050	.040	.060	.020	.020	.020	.020	.020	.020
Counting and packing	.0375	.0375	.0375	.0600	.050	.040	.050	.040	.050	.040	.065	.065	.065	.065	.065	.065
Overhead	.230 ^b	.230 ^b	.230 ^b	.0075	.010	.010	.010	.010	.010	.010	.010	.010	.010	.010	.010	.010
Other labor—foremen	.1500 ^b	.300	.300	.340	—	—	—	—	.400	.400	°	°	°	°	°	°
Miscellaneous	.060	.060	.060	.0970	—	—	—	—	—	—	—	—	—	—	—	—
Transportation to U. S.	—	—	—	.0400 ^d	—	—	—	—	—	—	—	—	—	—	—	—
	.005	.005	.005	.0150	—	—	—	—	—	—	—	—	—	—	—	—

36 A

Source: Information submitted to the Wage and Hour Division

^a Includes mother-of-pearl and trochus buttons

^b Includes administrative costs, rent, electricity, water, taxes (except income taxes), etc.

^c Not available

^d Includes expenses for repair mechanics, janitors, tools, supplies, and messenger boy.

^e Estimated on the basis of a 25 percent allowance for overhead

Costs of production

Production costs of two Puerto Rican and two mainland manufacturers of ocean pearl buttons are shown in Table 4. A comparison of current Puerto Rican manufacturing costs with those reported in November 1949, indicates that the cost of 18, 20, and 22 line buttons of Puerto Rican Firm A has increased from 12 to 19 percent, principally as the result of higher costs of raw materials; whereas, the total manufacturing cost of Puerto Rican Firm B rose 7.6 percent due to increased direct labor cost and overhead.

A direct comparison of costs between the two Island manufacturers and mainland producers is difficult, for a breakdown of costs according to the type of shell used is not available for the Puerto Rican firms. Moreover, differences in the quality of the raw materials used affects the costs as well as the yield in terms of quantity and quality.

Raw material costs of the two Puerto Rican manufacturers are approximately the same and are apparently higher than those incurred by mainland firms. However, direct labor costs are higher on the mainland, principally due to the difference in the cost of cutting button blanks. Differences in costs of this operation also account for a large portion of the higher direct labor cost reported by Puerto Rican Firm B.

The difference in total costs between the two mainland manufacturers is due principally to the larger amounts of shell required by mainland Firm B to produce one gross of buttons. It should be noted that on the mainland direct labor costs are higher for mother-of-pearl than for other types of shell due to higher cutting costs, and the fact that mother-of-pearl buttons are made in different thicknesses, requiring the splitting of button blanks.

The two mainland firms employ 374 production workers whose average hourly earnings are \$1.19 as compared to average earnings of \$.56½ an hour received by Puerto Rican workers. Comparative hourly wage rates for three principal occupations were reported as follows:

<i>Occupation</i>	<i>Average hourly rate in three Puerto Rican firms</i>	<i>Average hourly rate in two mainland firms</i>
Cutter	\$.62	\$1.41
Sorter	.47	.96½
Grinder	.52	.91

The success and earnings of an ocean pearl button firm depend as much on the quality as on the quantity of production, since substantially higher prices are received for first quality buttons than for the inferior grades. The relative amount of top quality buttons from a given amount of shell depends not only on the grade of shell used but also on the skill and judgment exercised by the workers. An approximate breakdown of quality of production for a mainland firm is presented below.

	<i>Red Star Mother-of-pearl</i>		<i>Red Star Trochus</i>	
1st Quality	40-55%	65-70%	40-50%	50-60%
2nd Quality	30-35	10-15	30-35	25-30
3rd Quality		5-10		10-20
4th Quality		5-10		
Other Quality		2-3		2-3

414 *Income*

Financial statements were submitted to the Wage and Hour Division by all Puerto Rican manufacturers. Red Star Manufacturing Company, Inc., reported a net profit before provision for income tax of \$13,573.55, and \$10,797.84 after taxes (Table 5). The net profit after taxes represents a 2.5 percent return on investment and a 1.7 percent (2.2 percent before taxes) return on net sales. Direct labor costs composed 30 percent and administrative salaries 5.5 percent of the total cost of goods sold.

In the same period the Red Star Button Company, Inc., of New York, which is the mainland purchasing and sales agent for the Island firm, earned a net profit of \$5,747.40 before provision for Federal Income Tax of \$1,800.45 (Table 6). The net profit after taxes of \$3,946.95 amounted to a 6 percent return on the net worth. Wages and salaries paid accounted for 8 percent of the total cost of goods sold.

On December 31, 1951 both firms listed large inventories, the Puerto Rican firm's totaling \$323,327.62 and the mainland firm's (including merchandise for shipment to Puerto Rico) \$205,498.07. The capital structures of the two corporations as of December 31, 1951 are shown below:

Red Star Manufacturing Company, Inc.,
of Puerto Rico

Capital Stock (par value \$100)		
Authorized and issued	2,100 shares	\$210,000.00
Surplus		399,407.73
Total capital and surplus		<u>\$609,407.73</u>
Less cost of stock reacquired	1,020 shares	185,861.70
Net worth		<u><u>\$423,546.03</u></u>

Red Star Button Company, Inc.,
of New York

Capital Stock (no par value)		
Authorized and issued	1,000 shares	\$ 3,237.56
Surplus		80,719.05
Total capital and surplus		<u>\$ 83,956.61</u>
Less cost of stock reacquired	595 shares	19,635.00
Net worth		<u><u>\$ 64,321.61</u></u>

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The Manati Pearl Works, Inc., incurred a net loss of \$4,816.43 in its pearl button manufacturing operations in 1951 (Table 7). Direct labor costs were 26 percent of the total cost of goods sold. The net worth section of the firm's balance sheet on December 31, 1951 was as follows:

Capital Stock

Issued and outstanding		
250 shares Common at \$100.00		\$ 25,000.00

Surplus

Balance, January 1, 1951	\$15,442.63	
Less: Net loss to Dec. 31, 1951	4,766.43	10,676.20

Net worth		<u>\$ 35,676.20</u>
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Table 5. Red Star Manufacturing Company, Inc.;
Profit and Loss Statement
January 1 - December 31, 1951

<i>Net sales</i>			
Export sales—to U. S.		\$688,427.77	
Less returns and allowances		69,324.43	\$619,103.34
Local sales—to Puerto Rican customers			5,522.38
Net sales			624,625.72
<i>Deduct cost of goods sold</i>			
Inventories at beginning of period	\$161,018.56		
Shell and shanks purchased (incl. freight and insurance)	417,915.29		
Wages paid	181,186.86		
Tools and supplies used	13,186.68		
Water, light and power	9,065.53		
Repairs to building, machinery and equipment	11,567.26		
Depreciation of buildings, machinery, equipment, etc.	12,640.56	806,580.74	
Less inventories at end of period		271,855.70	534,725.04
<i>Gross profit</i>			89,900.68
<i>Deduct selling and administrative expenses</i>			
Administrative salaries		34,100.00	
Commissions on purchases		7,119.61	
Stationery, printing and packing supplies		1,586.22	
Telephone, telegraph and cables		204.80	
Fire and general insurance		9,649.60	
General expense (incl. donations, travelling, medical service, etc.)		17,720.08	
Automobile operation (incl. depreciation)		3,577.36	
Depreciation of office furniture, fixtures and equipment		315.55	
Freight and cartage out		252.10	
Taxes (other than income tax) (incl. Fed. Soc. Sec. Tax)		6,099.49	80,624.81
<i>Net operating profit</i>			9,275.87
<i>Add net other income</i>			
Other income			
Interest earned	1,576.13		
Miscellaneous income (sale of shell scrap, etc.)	4,702.86	6,278.99	
Less other expense			
Interest paid	943.06		
Life insurance expense	1,038.25	1,981.31	4,279.68
<i>Net profit (before provision for income tax)</i>			13,573.55
<i>Deduct—provision for Puerto Rican income tax</i>			2,775.71
<i>Net profit for year ended December 31, 1951</i>			10,797.84

Source: Information submitted to the Wage and Hour Division.

Table 6. Red Star Button Company, Inc., New York:
Profit and Loss Statement January 1 - December 31, 1951

<i>Net sales</i>			
Gross sales		\$865,032.26	
Less returns and allowances		16,413.22	\$848,619.04
<i>Deduct cost of goods sold</i>			
Inventory at beginning of period	\$211,240.10		
Purchases for year	706,579.04		
Freight in	2,488.74	920,307.88	
Less inventory at end of year		196,003.15	724,304.73
Gross profit from sales			124,314.31
Deduct selling and administrative expenses			108,604.86
Net profit from sales			15,709.45
Deduct net other expense			9,962.05
Net profit—before provision for Federal Income Tax			5,747.40
Deduct—provision for Federal Income Tax			1,800.45
Net profit for year ended December 31, 1951			3,946.95

Source: Information submitted to the Wage and Hour Division

417 Table 7. Manati Pearl Works, Inc.:

Profit and Loss Statement
January 1 - December 31, 1951

Net sales			\$554,195.68
<i>Less: Cost of goods sold</i>			
Inventory—January 1, 1951		\$ 33,861.86	
Buttons in process	\$ 12,956.64		
Rough blanks	12,492.80		
Shells	8,412.42		
Purchases—shells	471,027.66		
Freight-in and insurance—shells	19,496.34	490,524.00	
Total		524,385.86	
Deduct inventory December 31, 1951			
Shells	135,552.59		
Buttons in process	34,933.90	170,486.49	353,899.37
Gross profit on sales			200,296.31
<i>Production expenses</i>			
Direct labor	147,649.46		
Tools and factory supplies	18,137.39		
Light and power	5,780.67		
Insurance	3,438.74		
Workmen Compensation Insurance	1,484.24		
Water	354.80		
Rent	4,367.23		
Acid	1,669.21		
Miscellaneous	1,299.22		
Depreciation machinery	5,015.02		189,195.98
			11,100.33
<i>General and Administrative Expenses</i>			
Office salaries	2,600.00		
Taxes	624.25		
Auto and Travelling	1,572.27		
Shipping supplies	655.42		
Miscellaneous	1,488.05		
Cables, telegrams, telephone	274.54		
Office supplies	374.50		
Donations	465.00		
Freight-out	3,552.06		
Repairs	128.13		
Legal expenses	1,078.30		
Social Security payments	2,105.55		
Depreciation—automobile	847.55		
Depreciation—furniture and fixtures	151.14		15,916.76
Net loss			4,816.43
Less: Profit on sales of carboys			50.00
Net loss			4,766.43

Source: Information submitted to the Wage and Hour Division

418 The Puerto Rican firm also lists an account of \$203,207.98 payable to its mainland parent company, the Excelsior Pearl Works, Inc.

The profit and loss statement of the Porto Rican American Button Co. shows a net loss of \$3,141.23 for the last 6 months' operations in 1951 (Table 8). Direct labor costs made up 28 percent and material costs 54 percent of the total cost of goods sold. The capital structure of the firm is presented below:

Capital

Common—authorized

750 shares at \$100 par value	\$75,000.00	
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Less: Unissued

99 shares at \$100 par value	9,900.00	
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Issued and outstanding

651 shares at \$100 par value		\$65,100.00
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Surplus

Balance July 1, 1951	39,645.80	
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Deduct: Net loss for 6 months' period ending Dec. 31, 1951	3,141.23	36,504.57
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Net Worth

		<u>\$101,604.57</u>
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Mainland competition

The production of ocean pearl buttons in the United States is principally from shells imported from Australia, New Zealand, Indonesia, and the French Pacific Islands. Shipments into the United States of unmanufactured shells have averaged close to 11 million pounds annually since 1946 and enter the country duty-free (Table 9). Production of ocean pearl buttons in the United States is centered principally along the eastern sea-coast with 12 of the 24 establishments located in New Jersey (Table 10).

Although buttons of ocean shell are, in general, higher priced than those of fresh water pearl, the two kinds of buttons are made in a wide range of qualities, and price

ranges overlap, with the result that there is competition between the two classes. Fresh water shell buttons, produced from shells found in the Mississippi and the Great Lages region are manufactured largely in Iowa, although smaller establishments are operating in New York, Pennsylvania, and Missouri.

The production of ocean pearl buttons on the mainland was curtailed severely during World War II due to the scarcity of raw materials and the loss of workers to manufacturers engaged in defense production. Following the war, production was again expanded, and in 1947, more than 5.0 million gross were manufactured. Output remained approximately the same in 1948 but declined almost 900,000 gross in 1949. In 1950, production rose sharply to 5.8 million gross, which, however, was still below the 6.8 and 7.4 million gross manufactured in 1940 and 1941. During the post-war period, the average value per gross has varied between \$1.55 and \$1.73, which is more than double the pre-war value (Table 3).

Manufacturers of fresh water shell buttons were able to maintain production at a relatively high level during the war years. However, in the post-war period, production has declined from almost 10 million gross in 1946 to less than 5 million gross in 1949 and 1950. While
 422 in 1946, mainland manufactured fresh water shell buttons comprised in value almost 50 percent of all pearl or shell buttons manufactured in the United States (including Puerto Rico), by 1950, this proportion had been reduced to 28 percent.

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Table 8. Porto Rican American Button Co., Inc.: Profit
and Loss Statement, July 1 - December 31, 1951

<i>Net sales</i>			\$125,092.07
<i>Deduct: Cost of goods sold</i>			
Inventory of finished goods—July 1, 1951	\$21,344.16		
Purchases	455.24		
Cost of goods manufactured			
Materials used	\$69,555.85		
Direct labor	35,995.91		
Manufacturing expenses	6,096.20		
Inventory of goods in process— July 1, 1951	8,390.39		
<i>Deduct: Inventory of goods in process— December 31, 1951</i>	9,132.00	110,906.35	
Less: Inventory of finished goods— December 31, 1951		13,750.10	118,955.65
<i>Gross profit on sales</i>			6,136.42
<i>General and administrative expenses</i>			
Salaries		2,338.24	
Rent		1,110.00	
Freight		571.48	
Insurance		247.61	
Telephone		48.08	
Taxes		743.45	
Social Security Tax		1,127.49	
Depreciation			
Automobile	140.93		
Furniture and fixtures	249.27	390.20	
Miscellaneous general expenses		2,575.31	9,151.86
<i>Net operating loss</i>			3,015.44
<i>Other charges</i>			
Discounts and exchange			125.79
<i>Net loss for the period</i>			3,141.23

Source: Information submitted to the Wage and Hour Division

The principal factor in the decline of pearl and shell buttons manufactures appears to be the substitution of plastic buttons which compete for use on less expensive shirts, pajamas, blouses, etc. Mainland production figures indicate that fresh water shell buttons have been replaced by plastic buttons to a much greater extent than ocean pearl buttons. It is likely that the losses suffered by the ocean pearl button industry occurred principally in the lower price lines, where the lower quality ocean pearl buttons compete with fresh water shell and plastic buttons.

In the United States, buttons made from synthetic resins are now produced in greater volume than any other kind (Appendix Table A). Synthetic resin buttons except those cast of phenolics are molded, whereas most other kinds are formed by cutting. They can be made easily in almost any shape or color. Although synthetic resin materials vary widely in cost, unit costs can be held down because molding is an automatic process requiring little skilled labor, and synthetic resin buttons need not be polished. Domestic production of these buttons is likely to increase rather than decrease in the future, for domestic plastic fabricators display high technical efficiency.¹

Production costs of two mainland manufacturers of plastic buttons are presented below.

Manufacturer A. 22 line natural button, molded plastic,
December 1951

	<i>Cents per gross</i>	<i>Percent</i>
Raw materials	5.4¢	44 percent
Direct labor	2.3	20
Other costs, expenses, and profits	4.4	36
Selling price	12.1	

¹ U. S. Tariff Commission, *Summaries of Tariff Information*, Vol. 15, 1948.

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Manufacturer B. 22 line button, natural urea, July 1951

	<i>Cents per gross</i>	<i>Percent</i>
Raw materials	7.1¢	54 percent
Direct labor	3.8	28
Other costs, expenses and profits	2.4	18
Selling price	13.3	

Foreign competition

The Philippine Republic and Japan supply the mainland with a fairly large volume of ocean pearl buttons. Buttons of pearl or shell imported from the Philippine Republic are subject under the Philippine Trade Act of 1946 to an absolute quota of 850,000 gross per year, effective January 1946, a quantity slightly higher than peak

423 shipments in any year immediately preceding the war.² The entire quota will be duty-free until

January 1, 1955, when a progressively decreasing duty-free quota within the absolute quota will come into effect. Beginning on that date the duty-free quotas are decreased by 5 percent of the original quotas, until in 1974, the duty-free quota is zero. The absolute quota remains throughout the period ending in 1974 as the legal ceiling on imports.

Imports into the United States of pearl and shell buttons, are shown in Table 11. Whereas finished ocean pearl buttons constitute the largest share of imports both in quantity and value, lesser amounts of fresh water shell buttons and button blanks from the Philippine Republic and fresh water shell buttons from Japan also enter the mainland market.

² U. S. Department of State, United States Import Duties, June 1946, pp. 6-8.

In 1948, 204,472 gross of finished ocean pearl buttons valued at almost \$200,000 were imported from the Philippine Republic. Shipments increased the following two years to approximately 324,000 gross in 1949 and 605,000 gross in 1950, while the average value per gross declined from \$.98 to \$.81. In 1951, Philippine imports of finished pearl buttons declined about 90,000 gross below 1950. However, imports of button blanks and fresh water shell buttons which had theretofore been negligible, increased to 116,844 gross and 69,546 gross, respectively. The average value per gross of pearl or shell button blanks declined from \$.75 in 1950 to \$.53 in 1951.

Resumption of volume imports of finished ocean pearl buttons from Japan occurred in 1949, when almost 385,000 gross valued at \$201,000 entered the mainland market. Shipments increased substantially in 1950, amounting to approximately 467,000 gross, and, contrary to the trend of shipments from Puerto Rico and the Philippine Republic, rose 80,000 gross in 1951. However, 1951 imports of fresh water shell buttons declined almost 50,000 gross below 1950. In terms of total United States consumption of ocean pearl buttons, foreign imports in 1950 accounted for 13.25 percent of the quantity and 7 percent of the value (Appendix Table B).

Since the Department of Commerce statistics do not specify the size, type or quality of button imports, a direct comparison of Philippine and Japanese manufactures with Puerto Rican and mainland products is difficult. The average value per gross of Philippine pearl buttons in 1951 was considerably lower than that of Puerto Rican manufacturers, as total imports amounted to approximately 80 percent of the allowed quota. Japanese manufactures were lower in value than either Philippine or Puerto Rican products, but, Japanese imports include some very small buttons and self-shank buttons, the production of which has not proven economically feasible in the United States. Furthermore, the tariff applicable to

button imports affords United States producers considerable protection ¹ (Appendix Table E).

* * * *

449 Tables 28, 29, 30, and 31 show the distribution of earnings of workers in each division of the industry and the estimated direct effects that would result from the establishment of various possible minimum wage rates to 75 cents per hour. It should be noted that these estimates make allowances only for the direct amount necessary to raise those workers presently receiving less than a given minimum up to that rate. The data do not permit the calculation of additional wage costs that may be incurred to maintain incentives or adequate wage differentials.

Pearl Button and Buckle Division

An average straight-time hourly wage of 56.5 cents was received by workers in the Division. Approximately one-third of the employees earned the applicable minimum rate of 46 cents an hour, and an additional 13.3 percent received less than 50 cents. Approximately one-quarter of the workers received between 50 and 60 cents an hour, one-sixth between 60 and 75 cents, and slightly over one-tenth 75 cents or more. Raising the minimum wage to 50 cents would directly affect 47.9 percent of the workers and result in a direct wage bill increase of 3.0 percent. The establishment of a 54 or 58-cent rate would raise the wage bill 6.8 and 11.3 percent respectively; whereas a rate of 75 cents would directly affect 89.4 percent of the employees and cause a direct wage bill increase of 35.7 percent.

* * * *

¹ For example, for a gross of 18 line pearl buttons appraised by customs at 50 cents, the duty would be 1¾ cents per line plus 25 percent of the dutiable value per gross, or 44 cents.

Table 28. Pearl Button and Buckle Division: Distribution of employees according to average straight-time hourly earnings; and, percentage of workers directly affected by, and estimated direct percentage increase in the wage bill resulting from the establishment of various possible wage rates,

December 1951 - January 1952

<i>Average straight-time hourly earnings</i>	<i>Number of employees</i>	<i>Percent</i>	<i>Proposed minimum wage rate</i>	<i>Percentage of workers affected</i>	<i>Percentage increase in wage bill</i>
46	148	34.6			
46.1-47.9	43	10.0	48	44.6	1.4
48.0-49.9	14	3.3	50	47.9	3.0
50.0-51.9	28	6.5	52	54.4	4.8
52.0-53.9	22	5.1	54	59.5	6.8
54.0-55.9	18	4.2	56	63.7	9.0
56.0-57.9	25	5.8	58	69.5	11.3
58.0-59.9	14	3.3	60	72.8	13.9
60.0-64.9	29	6.8	65	79.6	20.6
65.0-69.9	26	6.1	70	85.7	27.9
70.0-74.9	16	3.7	75	89.4	35.7
75.0-79.9	22	5.1			
80.0-84.9	4	.9			
85.0-89.9	4	.9			
90.0-94.9	4	1.0			
95.0-99.9	3	.8			
100.0 and over	8	1.9			
Number of establishments					3
Number of employees					428
Average straight-time hourly earnings					56.5¢
Average length of workweek					36.6 hrs.

Source: Wage survey conducted by the U. S. Dept. of Labor, Wage and Hour Division

Appendix Table B. Comparison of marine aquaculture products, shipments from Puerto Rico, the Philippine Republic, and Japan of finished ocean pearl buttons, 1946-1950 (Quantity and value in thousands)

Mainland			Puerto Rican			Philippine Republic			Japanese		
Ocean Pearl Buttons			Ocean Pearl Buttons			Ocean Pearl Buttons			Ocean Pearl Buttons		
Quantity Gross	Value Dollars	Quantity Gross	Value per Gross Dollars	Quantity Gross	Value per Gross Dollars	Quantity Gross	Value per Gross Dollars	Quantity Gross	Value per Gross Dollars	Quantity Gross	Value per Gross Dollars
1946 4,309	\$ 6,558	3,462	\$5,636	847	\$ 922	\$1.09	—	—	—	—	—
1947 6,001	8,831	5,086	7,902	846	864	1.02	69	\$ 65	—	—	—
1948 5,956	9,573	4,974	8,587	746	769	1.03	204	199	\$ 94	32	\$ 18
1949 5,629	8,005	4,090	6,782	831	729	.88	324	293	.98	384	201
1950 8,064	11,207	5,804	9,239	1,188	1,193	1.01	605	493	.90	467	282
1951 6,700	9,767	4,665	7,715	969	1,281	1.32	518	431	.81	548	340
	%	%	%	%	%	%	%	%	%	%	%
1946 100	100	80	86	20	14	—	—	—	—	—	—
1947 100	100	85	89	14	10	1	1	1	—	—	—
1948 100	100	83.5	89.75	12.5	8	3.5	3.5	2	.5	.5	.25
1949 100	100	72.5	84.75	15	9	5.5	5.5	3.5	7	7	2.75
1950 100	100	72	82.5	14.75	10.5	7.5	7.5	4.5	5.75	5.75	2.5
1951* 100	100	69.5	79.0	14.5	13.0	7.75	7.75	4.5	8.25	8.25	3.5

Comparisons by total value of finished and unfinished ocean pearl buttons and fresh water shell buttons

(Value in thousands)

	Total Value	Mainland ocean pearl Value	Mainland fresh water pearl Value	Puerto Rico total Value	Philippine Republic total Value	Japan total Value	Total %	Mainland ocean pearl %	Mainland fresh water pearl %	Puerto Rice total %	Philippine Republic total %	Japan total %
1946	\$13,099	\$5,636	\$6,528	\$ 926	\$ 9	—	100	43	49.9	7	.1	—
1947	17,042	7,902	8,166	902	72	—	100	46.5	48	5	.5	—
1948	15,047	8,587	5,397	814	231	\$ 18	100	57	35.9	5.5	1.5	.1
1949	12,042	6,782	3,696	989	323	252	100	56.25	30.75	8.25	2.75	.25
1950	15,909	9,239	4,075	1,708	521	366	100	58	25.5	10.75	3.5	2.25
1951	14,080	7,715	3,805	1,605	550	405	100	54.75	27.0	11.5	4.0	2.75

Source: United States Department of Commerce, Bureau of the Census; United States Department of the Interior, Fish and Wildlife Service. Figures included by agreement of counsel. Data supplied in testimony of Thomas J. Judge (R. 52-72)

Appendix Table F. Gross average hourly earnings, employment, and number of establishments in the pearl button industry in Puerto Rico, 1937-1952

Date	Average hourly earnings	Number Minimum of wage of establish- rate employees ments (cents)		
1937-1938	\$.187	626	3	*
1938-1939	.299	261	2	25
1939-1940	.331	393	2	30
1940-1941	.334	395	2	30
1941-1942	.343	358	2	30
1942-1944	*	*	*	30
1945 (January)	.452	238	2	30
1946 (January)	.502	265	2	35
1947 (January)	.547	369	2	35
1949 (October)	.511	429	3	37½
1952 (December 1951- January 1952)	.565	428	3	46

Source: Puerto Rico Department of Labor, *Annual Report of the Commissioner of Labor*, 1938-1939 through 1941-42; United States Department of Labor, Wage and Hour Division, 1945-1951

* Not available.

RED STAR MFG., CO., INC.

Profit and Loss Statement
January 1 - December 31, 1948

NET SALES

Export sales—to U.S.	\$648,868.24		
Less returns and allowances	15,532.87	\$633,335.37	
Local sales—to P.R. customers		<u>2,115.64</u>	\$635,451.01

DEDUCT COST OF GOODS SOLD

Inventories at beginning of period	122,116.27		
Shell and shanks purchased (incl. frt. and ins.)	275,464.68		
Wages paid	204,389.46		
Tools and supplies; water, light and power; repairs; depreciation; etc.	<u>62,459.10</u>	664,429.51	
Less inventories at end of period		<u>145,171.91</u>	519,257.60

GROSS PROFIT

116,193.41

DEDUCT SELLING AND ADMINISTRATIVE EXPENSES

Administrative salaries		49,000.00	
Commissions on purchases; stationery and printing; insurance; taxes; and other selling and administration expenses		<u>45,778.30</u>	94,778.30

NET OPERATING PROFIT

21,415.11

ADD NET OTHER INCOME

Interest earned, sale of shell scrap, etc.		4,200.22	
Less other expenses—interest paid, life insurance expense, etc.		<u>1,715.41</u>	2,484.81

NET PROFIT—before provision for Puerto Rican income tax 23,899.92

DEDUCT—provision for Puerto Rican income tax 4,685.29

NET PROFIT—for year ended December 31, 1948 19,214.63

Notes: Above Profit and Loss Statement per Audit Report of:

Sparrow, Waymouth & Co.
Certified Public Accountants
San Juan, Puerto Rico

The minimum wage rate for the industry was increased—from 35¢ per hour, to 37½¢ per hour—on or about July 19, 1948.

RED STAR MFG. CO., INC.

Profit and Loss Statement
January 1 - December 31, 1949

NET SALES

Export sales—to U.S.	\$533,870.42		
Less returns and allowances	50,690.76	\$483,179.66	
Local sales—to P.R. customers		<u>4,382.34</u>	\$487,562.00

DEDUCT COST OF GOODS SOLD

Inventories at beginning of period	145,171.91		
Shell and shanks purchased (incl. frt. and ins.)	136,474.38		
Wages paid	152,578.89		
Tools and supplies; water, light and power; repairs; depreciation; etc.	37,839.50	472,064.68	
Less inventories at end of period		<u>55,219.35</u>	416,845.33

GROSS PROFIT

70,716.67

**DEDUCT SELLING AND ADMINISTRATIVE
EXPENSES**

Administrative salaries		23,700.00	
Commissions on purchases; stationery and printing; insurance; taxes; and other selling and administrative expenses		<u>33,516.39</u>	57,216.39

NET OPERATING PROFIT

13,500.28

ADD NET OTHER INCOME

Interest earned; sale of shell scrap; etc.		10,797.52	
Less other expenses—interest paid; life insurance expenses; etc.		<u>1,737.53</u>	9,059.99

NET PROFIT—before provision for Puerto Rican income tax 22,560.27

DEDUCT—provision for Puerto Rican income tax 4,439.72

NET PROFIT—for year ended December 31, 1949 18,120.55

NOTES: Above Profit & Loss Statement per audit report of:

Sparrow, Waymouth & Co.
Certified Public Accountants
San Juan, Puerto Rico

A minimum wage rate of 37½¢ per hour prevailed throughout the year 1949.

RED STAR MFG. CO., INC.

Profit and Loss Statement

January 1 - December 31, 1950

NET SALES

Export sales—to U.S.	\$854,749.11		
Less returns and allowances	15,139.57	\$839,609.54	
Local sales—to P.R. customers		3,377.08	\$842,986.62

DEDUCT COST OF GOODS SOLD

Inventories at beginning of period	55,219.35		
Shell and shanks purchased (incl. frt. and ins.)	423,457.09		
Wages paid	256,459.35		
Tools and supplies; water, light and power; repairs, depreciation; etc.	64,650.58	799,786.37	
Less inventories at end of period		161,018.56	638,767.81

GROSS PROFIT

204,218.81

**DEDUCT SELLING AND ADMINISTRATIVE
EXPENSES**

Administrative salaries		36,700.00	
Commissions on purchases; stationery and printing; insurance, taxes; and other selling and administrative expenses		43,738.62	80,438.62

NET OPERATING PROFIT

123,780.19

ADD NET OTHER INCOME

Interest earned, sale of shell scrap, etc.	13,294.73		
Less other expenses—interest paid, life insurance expense, etc.	2,794.66		10,500.07

NET PROFIT—before provision for Puerto Rican income tax

134,280.26

DEDUCT—provision for Puerto Rican income tax

34,470.54

NET PROFIT—for year ended December 31, 1950

99,809.72

Notes: Above Profit & Loss Statement per audit report of:

Pol, Toro, Gil & Co.
 Certified Public Accountants
 San Juan, Puerto Rico

The minimum wage rate for the industry was increased—from 37½¢ per hour to 46¢ per hour—on or about August 24th, 1950.

The "police action" in Korea resulted in a very substantial increase in the demand for pearl buttons in the United States during the latter half of the year 1950.

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MANATI PEARL WORKS, INC.

Manati, P. R.

Statement of Income and Expenses

March 1, 1948 - December 31, 1948

Net Sales				\$61,825.35
Less: Cost of Goods Sold				
Purchases—Shells		\$ 71,062.44		
Purchases—Finished Buttons		595.25		
Freight-In—Shells		3,040.97		
		\$ 74,698.66		
Production Expenses				
Direct Labor	\$ 38,745.47			
Factory Supplies	4,887.82			
Light and Power	1,067.77			
Insurance Machinery	1,487.42			
Water	135.72			
Rent—Factory	4,200.00			
Acid	1,229.26			
Depreciation—Machinery	3,679.05			
Miscellaneous	475.21	55,907.72		
		\$130,606.38		
Less: Inventory 12/31/48				
Finished Buttons	\$ 14,360.75			
Buttons in Process	23,707.97			
Rough Blanks	6,916.75			
Raw Materials	19,136.84	64,122.31	66,484.07	
			\$ 4,658.72	
General and Administrative Expenses				
Office Salaries		\$ 715.00		
Taxes		15.63		
Legal Expenses		105.00		
Donations		35.00		
Freight-Out		248.23		
Auto and Travelling		4,519.34		
Cables and Telephone		414.10		
Office Supplies		172.46		
Organization Expenses		229.50		
Depreciation				
Automobile		301.00		
Furniture and Fixtures		80.93		
Miscellaneous		1,282.96		
Loss in Petty Cash		17.10		
			8,136.25	
NET LOSS FOR PERIOD				\$ 12,794.97

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MANATI PEARL WORKS, INC.
Manati, P. R.

Statement of Income and Expenses
For the Year Ended December 31, 1949

Net Sales			\$306,173.59
Less: Cost of Goods Sold			
Purchases—Shells	\$166,385.50		
Freight-In—Shells	6,628.60		
		<u>\$173,014.10</u>	
Add: Inventory January 1, 1949			
Finished Buttons	\$ 14,360.75		
Buttons in Process	23,707.97		
Rough Blanks	6,916.75		
Shells	19,136.84	64,122.31	
		<u>\$237,136.41</u>	
Less: Inventory December 31, 1949			
Finished Buttons	\$ 12,689.95		
Blanks	25,716.78		
Shells	43,199.80	81,606.53	155,529.88
			<u>\$150,643.71</u>
Production Expenses			
Direct Labor	\$118,889.50		
Tools and Factory Supplies Consumed	17,402.11		
Light and Power	5,022.39		
Insurance—Machinery	1,889.17		
Workmen Compensation Insurance	1,662.53		
Water	432.46		
Rent—Factory	3,450.00		
Acid	1,399.60		
Miscellaneous	2,185.62		
Depreciation—Machinery	4,516.29	156,789.67	
			<u>\$ 6,145.96</u>
General and Administrative Expenses			
Office Salaries	\$ 2,049.75		
Taxes	331.30		
Auto and Traveling	3,732.45		
Shipping and Supplies	262.64		
Miscellaneous	1,382.37		
Cables and Telephone	121.05		
Office Supplies	268.30		
Donations	45.00		
Freight-Out	2,078.97		
Repairs	241.35		
Depreciation			
Automobiles	784.18		
Furniture and Fixtures	114.88	11,412.24	
			<u>\$ 17,558.20</u>
NET LOSS FOR YEAR 1949			

498 MANATI PEARL WORKS, INC. Manati, P. R.

Statement of Income and Expenses

January 1 - December 31, 1950

NET SALES			\$669,217.33
Less: Cost of Goods Sold			
Purchases—Shells		\$321,538.29	
Freight-In and Insurance—Shells		16,669.03	
		<u>\$338,207.32</u>	
Add: Inventory January 1, 1950			
Finished Buttons	\$ 12,689.95		
Rough Blanks	25,716.78		
Shells	<u>43,199.80</u>	81,606.53	
		<u>\$419,813.85</u>	
Less: Inventory December 31, 1950			
Buttons in Process	\$12,956.64		
Rough Blanks	12,492.80		
Shells	<u>8,412.42</u>	33,861.86	385,951.99
			<u>\$283,265.34</u>
Production Expenses			
Direct Labor		\$173,534.57	
Tools and Factory Supplies Consumed		15,722.79	
Light and Power		5,840.72	
Insurance—Machinery		1,720.02	
Workmen Compensation Insurance		1,779.13	
Water		490.17	
Rent—Factory		3,300.00	
Acid		1,172.02	
Miscellaneous		1,882.50	
Depreciation—Machinery		<u>4,897.38</u>	210,339.30
			<u>\$ 72,926.04</u>
GENERAL AND ADMINISTRATIVE EXPENSES			
Office Salaries		\$ 4,873.00	
Taxes		942.46	
Auto and Travelling		2,913.92	
Shipping Supplies		1,203.98	
Miscellaneous		1,398.65	
Cables and Telephone		243.79	
Office Supplies		182.36	
Legal Expenses		1,613.86	
Donations		430.00	
Freight-Out		4,046.05	
Repairs		<u>1,176.50</u>	
Carried Forward		\$ 19,024.57	\$ 72,926.04
Brought Forward		\$ 19,024.57	\$ 72,926.04
GENERAL AND ADMINISTRATIVE EXPENSES			
(Cont'd.)			
Depreciation			
Automobiles		815.78	
Furniture and Fixtures		<u>133.91</u>	19,974.26
			<u>\$ 52,951.78</u>
Less Reserve for Income Tax			7,155.98
NET PROFIT			<u><u>\$ 45,795.80</u></u>

506 REPORT AND RECOMMENDATIONS
 OF
 SPECIAL INDUSTRY COMMITTEE NO. 12
 FOR THE
ESTABLISHMENT OF MINIMUM WAGE RATES
 IN THE
BUTTON, BUCKLE, AND JEWELRY INDUSTRY
 IN PUERTO RICO
 TO THE ADMNIISTRATOR
 OF THE
 WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

August, 1952

Report and Recommendations

Special Industry Committee No. 12 for Puerto Rico was appointed by Administrative Order No. 421, dated May 8, 1952, as amended by Administrative Order No. 422, dated June 3, 1952.¹ In accordance with the provisions of the Fair Labor Standards Act of 1938, as amended by the Act of June 26, 1940 (Public Res. No. 88, 76th

¹ For the purpose of investigating conditions in and recommending minimum wages for the Button, Buckle, and Jewelry Industry in Puerto Rico the committee was composed of the following representatives:

For the Public:

A. Cecil Snyder, Chairman, San Juan, Puerto Rico
Candido Oliveras, San Juan, Puerto Rico
W. Willard Wirtz, Evanston, Illinois

For the Employers:

Jaime Vick, San Juan, Puerto Rico
Fernando A. Villamil, Aguirre, Puerto Rico
James G. Steger, Toledo, Ohio

For the Employees:

Prudencio Rivera Martinez, San Juan, Puerto Rico
David Sternback, San Juan, Puerto Rico
Walter J. Mason, Washington, D. C.

Congress), and by the Fair Labor Standards Amendments of 1949 (Pub. Law No. 393, 81st Cong. 1st Sess.), the Committee was charged with the duty of investigating conditions in specified industries in Puerto Rico, including the Button, Buckle, and Jewelry Industry, and of recommending to the Administrator minimum wage rates for all employees in Puerto Rico in such industries, who within the meaning of the Act are "engaged in commerce or in the production of goods for commerce" excepting employees exempted by virtue of the provisions of section 13(a) and employees coming under the provisions of section 14.

507 In accordance with Administrative Order No. 421, as amended by Administrative Order No. 422, and pursuant to the provisions of the Fair Labor Standards Act of 1938, as amended, the Committee investigated conditions in the Button, Buckle, and Jewelry Industry in Puerto Rico.

Public hearings were held by the Committee on June 24, 25, 26, 27, 30 and July 1, 1952, in the New York Department Store Building, Santurce, Puerto Rico, pursuant to notice published in the Federal Register. The Committee heard all interested parties desiring to appear and present evidence on the matter of the minimum wage for the Industry under investigation.

From interested parties appearing as witnesses, the Committee obtained information with regard to the nature of the Industry and its operations, wages paid in the Industry, living and production costs, the economic and competitive situation of the Industry, the probable effect of increased or decreased labor costs on employment in the Industry, and other relevant factors. Information on the Button, Buckle, and Jewelry industry was prepared for the Committee by the Wage Determinations Division of the Wage and Hour and Public Contracts Divisions,

United States Department of Labor, and was explained by an economist attached to that division.

The Committee met in executive session on July 1, 1952, considered and discussed the evidence before it and made its recommendations with respect to the Button, Buckle, and Jewelry Industry in Puerto Rico.

The Committee's investigation and the recommendations reported herein covered the Button, Buckle, and Jewelry Industry, defined in Administrative Order No. 421 as follows:

Button, Buckle, and Jewelry Industry

The manufacture from any material of buttons, buckles, jewelry (including rosaries), and jewelry findings (including beads); *provided, however*, that the definition shall not include any activities covered by the definition of the Jewel Cutting and Polishing Industry in Puerto Rico.

On the basis of its investigation of the Button, Buckle, and Jewelry Industry in Puerto Rico, as above defined, and after due consideration of economic and competitive conditions in the Industry and other relevant factors, including those set forth in sections 5 and 8 of the Fair Labor Standards Act, as amended, the Committee has determined that the Pearl Button and Buckle Division, the Leather and Fabric Button and Buckle Division, the Button and Buckle (other than pearl, leather, or fabric) and Bead Division, the Rosary and Native Jewelry Division, the Necklace, Bracelet, and Similar Jewelry Division, the Precious Jewelry Division, the Metal Expansion Watch Band Division, and the Metal and Plastic Jewelry and Miscellaneous Products Division, as hereinafter defined, constitute distinct divisions of the Button, Buckle, and Jewelry Industry in Puerto Rico which are separable from each other, and that each division constitutes in

itself a distinct and separable industry or group of industries; that it is reasonable and necessary to divide the Industry in accordance with the following recommendations into separable divisions for the purpose of fixing for each such division minimum wage rates (1) which will not give such division a competitive advantage over any industry in the United States outside of Puerto Rico, and (2) which are the highest minimum rates (not in excess of 75 cents per hour) which will not substantially

curtail employment in such division and will not
508 give a competitive advantage to any group in the

Industry. The Committee has also determined that competitive conditions between each of the separable divisions of the Industry are such that the approval, disapproval, or subsequent cancellation of the rates recommended for any of such divisions will not give a competitive advantage to, or substantially curtail employment in, any group in the Button, Buckle, and Jewelry Industry.

The Committee recommends therefore that the Button, Buckle, and Jewelry Industry in Puerto Rico, as defined in Administrative Order No. 421, be divided into separable divisions for the purpose of fixing minimum wage rates, and that these separable divisions be entitled and defined as follows:

Pearl Button and Buckle Division

The manufacture of buttons and buckles from ocean pearl or other natural shell.

Leather and Fabric Button and Buckle Division

The manufacture of buttons and buckles from leather, cotton tape or other fabric.

*Button and Buckle (other than pearl, leather, or fabric)
and Bead Division*

The manufacture of buttons and buckles from any material except ocean pearl or other natural shell, leather, cotton tape or other fabric; and the manufacture of

metal, glass, plastic and wooden beads, but not including the pearlizing or further processing and assembling of beads into necklaces, bracelets, and similar jewelry items.

Rosary and Native Jewelry Division

The assembling of rosaries and the manufacture of novelty jewelry from materials of local origin such as seeds, shells, natural fibers and similar materials.

Necklace, Bracelet, and Similar Jewelry Division

The stringing of artificial pearl and other necklaces, bracelets, and similar jewelry items made of beads, including pearlizing and other processing operations.

Precious Jewelry Division

The manufacture of jewelry or jewelry findings made of precious metals whether or not embellished with natural or synthetic stones.

Metal Expansion Watch Band Division

The manufacture or partial manufacture from metal of expansion bands or expansion bracelets for watches.

Metal and Plastic Jewelry and Miscellaneous Products Division

The manufacture from plastics, non-precious metals, or other materials of jewelry, jewelry findings and all other products included in the Button, Buckle, and Jewelry Industry, as defined herein, except those included in the

509 Pearl Button and Buckle Division, the Leather and Fabric Button and Buckle Division, the Button and Buckle (other than pearl, leather, or fabric) and Bead Division, the Rosary and Native Jewelry Divi-

sion, the Necklace, Bracelet, and Similar Jewelry Division, the Precious Jewelry Division, and the Metal Watch Band Division.

The Committee, having due regard to economic and competitive conditions determined that the minimum wage rates recommended herein are the highest rates which may be fixed under the Fair Labor Standards Act of 1938, as amended, which will not substantially curtail employment in the divisions of the Button, Buckle, and Jewelry Industry in Puerto Rico for which they are recommended. The Committee determined that labor costs will not be affected by the establishment of the recommended minimum wage rates to an extent that will substantially curtail employment or cause material dislocations in the Button, Buckle, and Jewelry Industry in Puerto Rico as now carried on. The Committee was also convinced that none of its recommendations will give a competitive advantage to any group in the Industry or to any industry in Puerto Rico over any industry in the United States outside of Puerto Rico.

The minimum wage recommendations which are made herein for the separable recommended divisions of the Button, Buckle, and Jewelry Industry in Puerto Rico are made as separate and distinct recommendations.

Upon the basis of its investigation, the Committee by a unanimous vote adopted the following recommendation:

Wages at a rate of not less than 54 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Pearl Button and Buckle Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a unanimous vote adopted the following recommendation:

Wages at a rate of not less than 53 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Leather and Fabric Button and Buckle Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a unanimous vote adopted the following recommendation:

Wages at a rate of not less than 48 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Button and Buckle (other than pearl, leather, or fabric) and Bead Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a majority vote of 7 to 1 adopted the following recommendation:

510 Wages at a rate of not less than 33 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Rosary and Native Jewelry Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a vote of 6 to 3 adopted the following recommendation:

Wages at a rate of not less than 36 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Necklace, Bracelet, and Similar Jewelry Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a vote of 6 to 3 adopted the following recommendation:

Wages at a rate of not less than 55 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Precious Jewelry Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a vote of 6 to 3 adopted the following recommendation:

Wages at a rate of not less than 60 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Metal Expansion Watch Band Division of the Button, Buckle, and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Upon the basis of its investigation, the Committee by a vote of 6 to 3 adopted the following recommendation:

Wages at a rate of not less than 50 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the Metal and Plastic Jewelry and Miscellaneous Products Division of the Button, Buckle,

and Jewelry Industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

Respectfully submitted,

As to recommendations for the Pearl Button and Buckle Division, the Leather and Fabric Button and Buckle Division, and the Button and Buckle (other than pearl, leather, or fabric) and Bead Division:

/s/ A. Cecil Snyder	/s/ Candido Oliveras
A. Cecil Snyder, Chairman	Candido Oliveras
/s/ W. Willard Wirtz	
W. Willard Wirtz	

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/s/ Jaime Vick	/s/ Fernando Villamil
Jaime Vick	Fernando A. Villamil
/s/ James G. Steger	/s/ Prudencio Rivera
James G. Steger	Martinez
/s/ David Sternback	Prudencio Rivera
David Sternback	Martinez
	/s/ Walter J. Mason
	Walter J. Mason

As to recommendation for the Rosary and Native Jewelry Division:

/s/ A. Cecil Snyder	/s/ Candido Oliveras
A. Cecil Snyder, Chairman	Candido Oliveras
/s/ W. Willard Wirtz	/s/ Jaime Vick
W. Willard Wirtz	Jaime Vick
/s/ Fernando A. Villamil	/s/ James G. Steger
Fernando A. Villamil	James G. Steger
/s/ Walter J. Mason	
Walter J. Mason	

As to recommendations for the Necklace, Bracelet, and Similar Jewelry Division, the Precious Jewelry Division, and the Metal and Plastic Jewelry and Miscellaneous Products Division:

/s/ A. Cecil Snyder	/s/ Candido Oliveras
A. Cecil Snyder, Chairman	Candido Oliveras
/s/ W. Willard Wirtz	/s/ Jaime Vick
W. Willard Wirtz	Jaime Vick
/s/ Fernando A. Vilamil	/s/ James G. Steger
Fernando A. Villamil	James G. Steger

As to recommendations for the Metal Expansion Watch Band Division:

/s/ A. Cecil Snyder	/s/ Candido Oliveras
A. Cecil Snyder, Chairman	Candido Oliveras
/s/ W. Willard Wirtz	/s/ Fernando A. Vilamil
W. Willard Wirtz	Fernando A. Villamil
/s/ James G. Steger	/s/ Prudencio Rivera Martinez
James G. Steger	Prudencia Rivera Martinez

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UNITED STATES
DEPARTMENT OF LABOR

Wage and Hour and Public Contracts Divisions

In the Matter of:

The Minimum Wage Recommendation of Special Industry
Committee No. 12 for Puerto Rico for the Button,
Buckle and Jewelry Industry.

Time: 10:00 A.M.

Place: Room 5406 Department of Labor
Washington, D. C.

The above-entitled matter came on for hearing before
Presiding Officer E. West Parkinson.

Present

Thomas J. Judge, Chief, Branch of Minimum Wage and
Homework, Wage and Hour and Public Contracts
Divisions

Hans Reif, Economist, Branch of Minimum Wages and
Homework, Wage and Hour and Public Contracts
Divisions

Leon Glaser, Solicitor's Office

Asa Robert Ambrister, Jr., Solicitor's Office

Appearances

Edwin Feldman, Attorney, 1350 Broadway, Room 1011,
New York City, New York, appearing on behalf of
Manati Pearl Works, Inc. and Red Star Manufactur-
ing Company, Inc.

Murray A. Chilson, President, Manati Pearl Works, Inc.,
95 Madison Avenue, New York City, New York

Leon H. Craft, Manager, Manati Pearl Works, Inc., San
Juan, Puerto Rico

Arthur F. Oetting, Secretary, Red Star Manufacturing
Company, Inc., San Juan, Puerto Rico

C. R. Martin, Treasurer, Red Star Manufacturing Com-
pany, Inc., 22 West 26th Street, New York City,
New York

W. P. Fickett, President, National Association of Button
Manufacturers, 40 Worth Street, New York City, New
York

Morris B. Steinberg, Attorney, 50 East 42nd Street, New
York City, New York, appearing on behalf of Phil
H. Harris and Dugan Manufacturing Company

Phil H. Harris, 32 West 18th Street, New York City,
New York

MORNING SESSION

October 7, 1952 10:00 A.M.

PRESIDING OFFICER PARKINSON: I guess we can proceed, gentlemen.

As I understand it, gentlemen, this is a hearing to take evidence and testimony in connection with recommendations of Special Industry Committee No. 12 for Puerto Rico under the Wage-Hour and Fair Labor Standards Acts.

The Rules of Practice as stated in the Notice of Hearing provide for those who wish to participate in the hearing to file notice seven days before the hearing of their intention to participate. As a result of those provisions in the Rules of Practice, I understand that representatives of the Beer Division of the Alcoholic Beverage and Industrial Alcohol Industry and representatives of the Button, Buckle, and Jewelry Industry wish to submit material.

Mr. Alphonso Valdes, vice president of Cerveceria India, Inc., has asked to make a statement with reference to the Beer Division. That is the only appearance that has been filed.

(Discussion off the record.)

PRESIDING OFFICER PARKINSON: We can proceed with the formal exhibits in the Beer Division. We can get the formal matters of proof into the record first. Let's have the formal proof put in on the Beer Division of the Alcoholic Beverage and Industrial Alcohol Industry. That will just take a few minutes.

MR. GLASER: Mr. Parkinson, before consideration is given to the recommendations of Special Industry Committee No. 12 for the Beer Division of the Alcoholic Beverage and Industrial Alcohol Industry, I would like to make a general statement regarding the manner in which that Committee was organized and functioned. This general statement can be used subse-

quently for the records of the hearings relating to the other industries considered by the Committee and covered by the Notice of this hearing without repetition at the subsequent hearings, unless anyone wishes to hear it again.

These hearings were called pursuant to Notice published in the Federal Register and will be conducted pursuant to Section 8 of the Fair Labor Standards Act of 1938, as amended, for the purpose of receiving evidence on the following question: whether the separate recommendations of Special Industry Committee No. 12 for Puerto Rico for the industries in Puerto Rico covered by the Notice shall be approved or disapproved.

Special Industry Committee No. 12 for Puerto Rico was appointed by the Administrator in May 1952 pursuant to Section 5 of the Fair Labor Standards Act, as amended. The Committee was appointed by Administrative Order No. 421 and was charged with the duty of investigating conditions in a number of industries in Puerto Rico.

The Committee was composed of residents of Puerto Rico and of the United States outside of Puerto Rico and included an equal number of representatives of the public and of employers and employees in the industries.

Pursuant to notice published in the Federal Register a public hearing was held by the Committee beginning on June 10, 1952 in San Juan, Puerto Rico for the purpose of receiving evidence to be considered by the Committee in determining the highest minimum wage rates for all

employees in specified industries, including the industry under consideration, who within the meaning of the Act are engaged in commerce or in the production of goods for commerce, which minimum rates, having due regard to economic and competitive conditions, will not substantially curtail employment in such industries in Puerto Rico and will not give any industry

in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico.

As was provided in the Notice of Hearing issued by the Chairman, all testimony at the public hearing was taken under oath and subject to reasonable cross examination by any interested persons present. It was provided in the Notice that testimony so received would be offered as evidence at the public hearing to be held on the minimum wage recommendations of Special Industry Committee No. 12.

By at least a majority vote in each case the Committee recommended the establishment of specified minimum wage rates for the various industries in Puerto Rico which it was charged with investigating, and also recommended that certain of the industries be divided into separable divisions, which it defined, for the purpose of fixing minimum wage rates for the various divisions. The Committee's recommendations with respect to each industry under consideration will be referred to later in this hearing. The Committee filed its reports and recommendations and its records with the Administrator, in accordance with the requirements of the Act and the Regulations of the Wage and Hour Division.

At this time I would like to offer for the record the following exhibits of general applicability to all the industries covered by these proceedings, which will be identified as Administrator's Exhibits 1-A through 1-I. Anyone may inspect and study them here, if he wishes
531 to do so.

Administrator's Exhibit 1-A is a copy of Administrative Order No. 421, published in the Federal Register on May 13, 1952, appointing Special Industry Committee No. 12 for Puerto Rico.

Administrator's Exhibit 1-B is a copy of Administrative Order No. 422, published in the Federal Register June 6, 1952, appointing Messrs. Wirtz, Mason, and Goldfinger, as members of the Committee.

Administrator's Exhibit 1-C is a copy of the Notice of Public Hearing before Special Industry Committee No. 12 for Puerto Rico for the purpose of receiving evidence to be considered in recommending minimum wage rates for employees in Puerto Rico engaged in certain enumerated industries. This Notice was published in the Federal Register on May 16, 1952.

Administrator's Exhibit 1-D is a copy of Administrative Order No. 423, accepting the resignations of Messrs. Wirtz and Villamil as members of the Committee, and appointing Reverend Ferris and Armando Bras to serve in their stead.

Administrator's Exhibit 1-E is a copy of Part 511 of Title 29, Code of Federal Regulations, Chapter V, being the Regulations of the Wage and Hour Division applicable to industry committees, together with two amendments thereto, published in the Federal Register on October 19, 1949 and February 25, 1950, respectively.

Administrator's Exhibit 1-F is a copy of the Journal of Proceedings of Special Industry Committee No. 12 for Puerto Rico.

Administrator's Exhibit 1-G is a copy of the Notice of Public Hearing on the minimum wage recommendations of Special Industry Committee No. 12 for Puerto Rico, dated August 27, 1952 and published in the Federal Register on August 30, 1952.

Administrator's Exhibit 1-H is a copy of a certified statement of Dorothea Tuney, of the Division of Information and Compliance, Wage and Hour and Public Contracts Divisions, indicating the publication afforded the Notice issued for this hearing.

Administrator's Exhibit 1-I is an order dated October 3, 1952 appointing E. West Parkinson and Clifford P. Grant as Presiding Officers for the public hearings on the minimum wage recommendations of Special Industry Committee No. 12 for various industries in Puerto Rico.

These exhibits are offered to show that Special Industry Committee No. 12 for Puerto Rico investigated eco-

nomie and competitive conditions in the industries in Puerto Rico which it was charged with investigating, and that all requirements of the Act and the Regulations have been complied with.

I ask that the foregoing Exhibits 1-A through 1-I be admitted into the record.

PRESIDING OFFICER PARKINSON: Any objection?

MR. FELDMAN: I would like to ask a question, if I may.

In Exhibit 1-D reference was made to certain resignations and the appointment of substitute members. Were the substitute members acting as members of the Committee at the time of the hearings in San Juan, or were they appointed to act after the hearings were closed?

MR. GLASER: Oh, no. They were appointed to act in connection with the hearings—

MR. FELDMAN: Would you give me those names again?

PRESIDING OFFICER PARKINSON: As I
533 understand, you mean, Mr. Glaser, that they actually participated in the hearings.

MR. GLASER: Yes. By Administrative Order No. 423, the Administrator accepted the resignation of W. Willard Wirtz as a public member of the Committee and Fernando A. Villamil as an employer member of the Committee, and appointed to serve on the Committee in their stead as a public member, Reverend James L. Ferris of Guayama, and Armando J. Bras as an employer member.

MR. FELDMAN: As I understand it, the two substitute persons were not in attendance at the hearings at which the companies I represent testified. Is that correct? Am I correct in that statement?

PRESIDING OFFICER PARKINSON: I can't answer that.

MR. FICKETT: Mr. Chairman, doesn't the transcript of the hearing contain a list of the members of the Committee.

MR. FELDMAN: My question is the names of the members who were substituted by the resignations and the appointments referred to in Exhibit 1-D.

Do I understand that the persons who were substituted took part as members of the Industry Committee at the hearings in Puerto Rico at which the Red Star Manufacturing Company and Manati Pearl Works appeared, or were these resignations after their appearance, and were these appointments made subsequently thereto?

PRESIDING OFFICER PARKINSON: It's a question to which you are entitled to an answer.

MR. FELDMAN: Off the record, the reason I ask that question is because the names that you have mentioned do not appear in the transcript as being members. Mr. Wirtz was present and if he had resigned, he had to resign, I take it, after our appearance.

534 MR. JUDGE: He resigned subsequent to the close of the hearings on the Button, Buckle, and Jewelry Industry.

MR. FELDMAN: In other words, you have members of the Committee who did not hear our case—

MR. GLASER: But they did not participate—

PRESIDING OFFICER PARKINSON: One at a time.

MR. GLASER: Just a minute. Off the record for a moment?

PRESIDING OFFICER PARKINSON: All right. Off the record.

(Discussion off the record.)

PRESIDING OFFICER PARKINSON: On the record.

MR. GLASER: To answer your question, Mr. Feldman, Mr. Wirtz and Mr. Villamil did participate in the consideration, in the deliberations of Industry Committee

No. 12 regarding the Button, Buckle, and Jewelry Industry. They attended all the sessions of the Committee in which evidence was received concerning that industry. They participated in the deliberations of the Committee in executive session and in the final vote on the proposed recommended minimum wage rates for that industry, and resigned subsequent to the conclusion of the Committee's deliberations concerning the Button, Buckle, and Jewelry Industry.

Does that answer your question?

MR. FELDMAN: They were not members at some time of the Committee after they had appeared as members. Now, you say that they acted up to the signing of the recommendation as to pearl buttons and buckles and then they resigned. Is that what you're saying?

MR. CLASER: That is correct.

MR. FELDMAN: Well, then, why did they have
535 to resign, if they had completed their task?

MR. JUDGE: Mr. Glaser, I don't think Mr. Feldman understands that there were some five separate industries considered by the Committee. All of these members sat through the Button, Buckle, and Jewelry, and then some of them resigned and sat for other industries. Each industry was considered separately, and the members who sat for each industry sat throughout that particular industry.

MR. FELDMAN: But wasn't this Committee appointed under an original single order?

MR. JUDGE: That is correct.

MR. FELDMAN: And wasn't this the Industry Advisory Committee that had to hear all of the sections?

MR. JUDGE: No.

MR. FELDMAN: Can you, therefore, tell me in what way the Department considers the separability of the subdivisions and the Industry Committee members connected therewith as being something which you can consider

them to be members of the Committee for one purpose and not members of the Committee for another?

In other words,—

MR. JUDGE: The members who sat on the Button, Buckle, and Jewelry sat throughout that entire industry and for all of the divisions of that industry. They did not sit, in some instances, for the Railroad, Railway Express, and Motor Transport Industries, and for some of the other industries; Stone and Glass and Related Products.

MR. FELDMAN: Could you tell me on what date Messrs. Wirtz and Villamil resigned?

PRESIDING OFFICER PARKINSON: To whom was your question directed?

536 Mr. Glaser, is the information that he asks for available in the transcript that was taken of the proceedings in Puerto Rico?

MR. FELDMAN: No.

MR. GLASER: The information is available in the Journal of Proceedings of the Committee and in the Administrative Order of the Administrator accepting the resignations of Mr. Villamil and Mr. Wirtz and appointing the Reverend Ferris and Armando Bras.

PRESIDING OFFICER PARKINSON: I want you to be in a position to develop your record. I want to do it in the briefest possible time. I want you to feel when you are through that you have got it. Now, I wonder if we could postpone consideration of this particular matter? We can take a recess while you get the answer to your question, or we can handle it in whichever way you wish. I just want to act in the most expeditious manner possible, that's all.

MR. FELDMAN: May I have Exhibit 1-D?

(Document handed to Mr. Feldman.)

MR. FELDMAN: Can you tell me whether it simply gives the date of the resignations? That's what I would like to know. The date of the resignations of Messrs. Wirtz and Villamil.

MR. GLASER: I can give you the date of their resignations. It's right in the Journal of the Proceedings of the Committee.

Messrs. Wirtz and Villamil resigned on July 1, 1952.

MR. FELDMAN: Am I correct in stating that their report and recommendation was made in August 1952, after their resignations?

MR. GLASER: No.

MR. FELDMAN: I have here the date of August 1952 at the head of the Report and Recommendations of 537 Special Industry Committee No. 12 for the Establishment of Minimum Wage Rates in the Button, Buckle, and Jewelry Industry in Puerto Rico. August 1952, it says.

MR. GLASER: That indicates the time at which the formal report, the signed report was submitted to the Administrator, Mr. Feldman. However, it does not—All that means is that the Committee went into executive session at the end of June and considered all the evidence which it had received concerning the Button, Buckle, and Jewelry Industry and voted on their recommendations. They made their decision, had their executive session.

Let me give you all the dates on this, as far as that industry is concerned—

MR. FELDMAN: Are you reading from Exhibit 1-D?

MR. GLASER: I am reading from Exhibit 1-F, the Journal of Proceedings of the Committee.

PRESIDING OFFICER PARKINSON: I think I prefer to call a recess while you gentlemen talk this thing over, instead of putting it all on the record. Then we will come back and put it on the record afterwards.

(Short Recess.)

PRESIDING OFFICER PARKINSON: Back on the record.

Some of this material is in evidence. Where the facts are in evidence, your record will support your position or not support it. You can proceed on your record then.

This hearing is for the purpose of taking evidence and all I want you to be sure is that you have the matter that you want in the record in order to raise your point. Your point will not be decided here.

MR. FELDMAN: I understand that, sir. All right.

PRESIDING OFFICER PARKINSON: All right.

Proceed, please.

538 MR. FELDMAN: Off the record, I have been in the Government service for a great number of years. I was a Trial Examiner for the Labor Board.

PRESIDING OFFICER PARKINSON: All right.

MR. FELDMAN: I understand you have offered in evidence, Mr. Hearing Officer—there has been offered in evidence a series of exhibits of the Administrator, among which I understand is an exhibit, No. 1-D, which informs the parties that during the course of the hearings in Puerto Rico of Special Industry Committee No. 12 for the Establishment of Minimum Wage Rates in the Button, Buckle, and Jewelry Industry, that originally there was a representative for the public by the name of F. Willard Wirtz, of Evanston, Illinois, and a Mr. Fernando A. Villamil, of Aguirre, Puerto Rico, for the employers; and that prior to the submission of their formal recommendations these gentlemen resigned and there was substituted for them two other persons who did not take part in any of the hearings involving the pearl button and buckle manufacturing industry, which I am interested in here and in whose behalf I appear. We learned this for the first time this morning when the exhibits were read in, an analysis was given of each of the exhibits by the person reading them into the record.

I asked the person who read them into the record to give me the date of the resignations, and I understand he says they took place sometime in July of 1952, the exact date apparently not being available at the moment.

I then asked when was the formal report and recom-

mendation of this Industry Committee made, and I was told it was made in August.

I am further told that in August these persons
539 were not members of the Committee. They had already resigned in July.

Nevertheless, we received from the Wage and Hour Administration the following document, entitled "Report and Recommendations of Special Industry Committee No. 12 for the Establishment of Minimum Wage Rates in the Button, Buckle, and Jewelry Industry in Puerto Rico to the Administrator of the Wage and Hour Division," August 1952, in which is contained recommendations with regard to the various divisions of the industry, and on the last page thereof there appear the names of Mr. Villamil, who at that time was not a member of the Committee, and Mr. Wirtz, who was not then a member of the Committee.

That being the case, I therefore object to the admission into evidence of and the acceptance of the report and recommendations, which I understand is contained in one of the exhibits which the speaker read into the record.

I contend that the report and recommendation executed by persons not members of the Committee at the time of the making of it is an invalid, improper, and an illegal report and recommendation of an industry advisory committee, and I object to its admissibility and its reception into evidence.

PRESIDING OFFICER PARKINSON: Does the Government have a statement? No argument, just facts.

MR. GLASER: Just for the purpose of explanation and clarification, Mr. Parkinson.

The report and recommendations of the Committee for the Button, Buckle, and Jewelry Industry has not been introduced. Reference to it was made in the course of my introductory statement, purely for the purpose of

540 general background and explaining the general procedure that had been followed by the Committee.

It was the intention to introduce that report and recommendation a little later today, in the course of the hearing on that industry.

I should also like to say—also by way of clarification as to the remarks of Mr. Feldman—that I think he is laboring under a misapprehension as to what transpired in connection with the submission of the report—

MR. FELDMAN: I don't want him to correct my objection. I made a specific objection.

PRESIDING OFFICER PARKINSON: Just a minute.

MR. FELDMAN: I'll debate him any time he wants, anywhere he wants. Right now I made an objection.

PRESIDING OFFICER PARKINSON: I want the Government's position as to what are the facts, if the Government wishes to state them.

Now, I am going to receive this exhibit for what it is worth.

MR. GLASER: The Committee voted on the recommendation for the Button, Buckle, and Jewelry Industry on July 1, 1952, as indicated by the Journal of the Proceedings of the Committee, which has been offered as Administrator's Exhibit 1-F.

Mr. Villamil and Mr. Wirtz participated in the deliberations of the Committee and in its vote on the recommendations for that industry.

Subsequent to the conclusion of the deliberations of the Committee with respect to that industry, the formal recommendations of the Committee for that industry were reduced to formal form and legal form in writing, in the form of the formal report and recommendations of the

541 Committee to the Administrator, and copies of that report—either the original of the report or copies of the report were signed by the various members

of the Committee who participated in the deliberations of the Committee with respect to that industry, and in its vote on the rates for the industry.

PRESIDING OFFICER PARKINSON: On what date?

MR. GLASER: I don't recall the exact date. This procedure followed was strictly in accordance with the Regulations, Part 511—

PRESIDING OFFICER PARKINSON: All right. That's argument.

MR. FELDMAN: What date was it? Could you tell me, sir, what date the Committee signed its recommendations, copy of which was sent to us by this Division with the caption date August 1952?

MR. GLASER: We have that information. I don't have it available. We can get it for you later, if you wish it.

MR. FELDMAN: You have the recommendation here, haven't you?

MR. GLASER: We have the recommendations here.

MR. FELDMAN: What is the date on it, sir?

MR. GLASER: Well, you see, that would not indicate the dates on which the individual members—

PRESIDING OFFICER PARKINSON: Just a minute. What date is on it, whether it indicates it, or not? You can state that later.

MR. GLASER: It just shows the date of August 1952.

PRESIDING OFFICER PARKINSON: All right.

MR. FELDMAN: And that's signed by Villamil, sir? Yes? Is your answer Yes? Villamil?

PRESIDING OFFICER PARKINSON: Is it in evidence?

MR. FELDMAN: Yes.

542 PRESIDING OFFICER PARKINSON: All right. Then don't question further on it.

MR. FELDMAN: And it's dated August 1952. They resigned as members of the Committee on July 1, 1952, these two gentlemen. Is that correct?

MR. GLASER: That is correct. I would also like to call your attention, Mr. Feldman, though, to the Regulations, Part 511, of the Administrator of the Wage and Hour Division, which have been introduced as Administrator's Exhibit 1-E. Section 511.18 provides that:

"Upon the completion of its investigation, the Industry Committee shall submit to the Administrator a report containing its recommendations, together with a statement of the reasons supporting such recommendations. No such recommendation shall be made by the Committee unless concurred in by a vote of not less than a majority of all its members. A copy of such report shall be signed by each member of the Committee who approves it, either at a meeting of the Committee or by circulation of one or more copies among the members of the Committee. At any time within five days following the transmission to the Administrator of the recommendations and report of the Committee, members dissenting from such recommendations and report may collectively or individually submit signed reports stating the reasons for their dissent, and members concurring in the recommendations may collectively or individually submit separate signed reports setting forth their views."

I merely cite that provision—

MR. FELDMAN: I have no objection to your citing it, but I don't see that it has any bearing on what I'm talking about.

543 PRESIDING OFFICER PARKINSON: All right. The record is complete on the matter, unless you have some more facts that you want to put in.

I will receive the exhibits and overrule your objection, receive them for what they are worth, without passing on the merits of the point which you raise.

You will be given an opportunity to brief it, if you wish, after these proceedings are over.

MR. FELDMAN: Just one point. I don't think you are making a ruling, since I have been given to under-

stand that the recommendation has not yet been offered up—

MR. GLASER: That's right.

MR. FELDMAN: Now, I would therefore ask, if I may—

PRESIDING OFFICER PARKINSON: I am not accepting it. I am just accepting the exhibits which the Government has offered.

MR. FELDMAN: Oh, yes, but my challenge is to the recommendation and report, and that has not yet been put up.

PRESIDING OFFICER PARKINSON: Then you're not objecting to my ruling.

MR. FELDMAN: I am taking objection to the ruling insofar as it anticipates—

PRESIDING OFFICER PARKINSON: It doesn't anticipate anything. I am accepting the exhibits which have been offered in evidence.

MR. FELDMAN: I can only say this. When you accept something for the record you have ruled, tacitly, at least, on its admissibility. I don't understand how else
544 you can receive anything for the record. You
 either receive it or reject it.

PRESIDING OFFICER PARKINSON: Just a minute.

Mr. Glaser, will you make your offer again, please, so this record will be straight?

MR. GLASER: I should like to submit for the record and ask that they be admitted, Administrator's Exhibits 1-A through 1-I, which I have previously described.

PRESIDING OFFICER PARKINSON: Is there any objection?

MR. FELDMAN: I object for the reasons I have given before, so far as any of these exhibits disclose that two of the members of the Industry Advisory Committee who sat and heard the parties who are now appearing in the role of objecting to the recommendations had

resigned on July 1, 1952, and that it is purported that they constituted members of the Committee in August 1952 after their resignations and rendered a report, copies of which we received, and since it discloses that the procedure—it now appears that the proceeding here is wholly invalid in that there is a report and recommendation signed by persons who, at the time of their signatures, were not and did not constitute the lawfully appointed body known as Industry Advisory Committee No. 12. Therefore, the proceeding here today to hear objections to the recommendations are also invalid. And therefore, the receipt of any exhibits insofar as they now appear to be in connection with hearing objections to the report and recommendations which are not properly before the Administrator, I make objection to the admissibility of these exhibits and, certainly, to the report and recommendation itself when it will be offered.

(Discussion off the record, and a recess was taken.)

545 PRESIDING OFFICER PARKINSON: All right. We will proceed, if we are ready, with the Button, Buckle, and Jewelry Industry.

Are there any preliminary matters that have not been disposed of?

MR. AMBRISTER: Yes, sir, Mr. Parkinson. I would like to introduce the Administrator's exhibits at this time.

I would first ask that the statement previously made by Mr. Leon Glaser this morning relative to the organization and procedure of Special Industry Committee No. 12 for Puerto Rico, and the exhibits of general applicability also previously introduced by him into the record of the hearing for the Beer Division of the Alcoholic Beverages and Industrial Alcohol Industry in Puerto Rico be incorporated by reference into the record of this hearing pertaining to the Button, Buckle, and Jewelry Industry in Puerto Rico.

MR. FELDMAN: I was not present on the introduction, nor did I take any particular interest in the Beer, and if there is going to be anything incorporated by reference from the Beer Industry into the Button and Buckle, I should like to be much more familiar with the nature of the items to be incorporated by reference.

MR. JUDGE: Mr. Parkinson, couldn't we just copy part of the transcript and repeat that in the Button, Buckle, and Jewelry hearing?

MR. AMBRISTER: We could. And I would like to explain, Mr. Feldman, the Exhibits 1-A through 1-I which I am referring to here were the ones which you saw and which you registered objection to earlier this morning.

MR. FELDMAN: Well, then, there is no need to incorporate them by reference. The Hearing Officer
546 has already accepted them over my objection. That's in addition thereto?

MR. AMBRISTER: Yes, sir. This is a new hearing. This is a separate industry and we are making the hearings separate for procedural purposes.

MR. FELDMAN: Mr. Hearing Officer, if reference is being made to the Exhibits 1-A through 1-I, which were the subject of my objection earlier, and it is merely an application to renew that for certain purposes with which I am not familiar, I renew my objection for the reasons already stated.

PRESIDING OFFICER PARKINSON: They are not offered yet.

MR. FELDMAN: Yes, he said he offered them.

PRESIDING OFFICER PARKINSON: Have you made a formal offer?

MR. AMBRISTER: I haven't. I will at this time, Mr. Examiner, make a formal offer that the Administrator's Exhibits 1-A through 1-I be introduced into the record in this proceeding.

MR. GLASER: For purposes of clarification, Mr. Feldman, these Exhibits 1-A through 1-I do not include

the report and recommendations of Committee No. 12.

MR. FELDMAN: I understand that. They were what I had with me a few minutes ago. Very well, I know. It does include the resignations of Villamil and Wirtz.

MR. GLASER: That's correct.

MR. FELDMAN: On July 1. They accepted those resignations on July 2, and your statement in connection with this is that the recommendations were made later and signed by these men, even though they had already resigned and their resignations had been accepted.

547 MR. AMBRISTER: That is correct.

PRESIDING OFFICER PARKINSON: Is there any objection?

MR. FELDMAN: I make the same objection I made earlier this morning.

PRESIDING OFFICER PARKINSON: The same ruling. The exhibits are accepted and the objection will go to the weight.

MR. FELDMAN: I am objecting on the ground that we have no proper proceeding at all.

PRESIDING OFFICER PARKINSON: Your objection is overruled.

MR. FELDMAN: Exception.

PRESIDING OFFICER PARKINSON: Surely.

(Whereupon, Administrator's Exhibits Nos. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, and 1-I were received in evidence.)

PRESIDING OFFICER PARKINSON: Mr. Judge, do you have a suggestion?

MR. JUDGE: Yes, Mr. Parkinson, I would suggest that the testimony taken this morning in connection with Administrator's Exhibits 1-A through 1-I be duplicated in the record of the hearing for the Button, Buckle, and Jewelry Industry.

PRESIDING OFFICER PARKINSON: What is the purpose of your suggestion?

MR. JUDGE: To avoid having to send copies of the Beer transcript to the parties interested only in the Button, Buckle, and Jewelry Industry.

MR. FELDMAN: I don't understand that at all.

MR. JUDGE: Just simply copy, Mr. Feldman, the testimony taken this morning—

MR. FELDMAN: I don't know what that testimony was. You excused us from sitting in and, therefore, frankly—

548 PRESIDING OFFICER PARKINSON: I did it for your own convenience.

MR. FELDMAN: I know you did and I appreciate it, but nevertheless I am not clairvoyant and I didn't have an opportunity of knowing what went into the record which you are now saying should be included by reference.

MR. JUDGE: No, Mr. Feldman, you were present here when we discussed Exhibits 1-A through 1-I.

MR. FELDMAN: Yes.

MR. JUDGE: That's the only part I refer to.

MR. FELDMAN: You've already gotten a ruling on that and it's in. Now, what are you moving now; to do what?

MR. JUDGE: Off the record, simply that there be typed into this hearing—

MR. GLASER: Mr. Feldman,—

PRESIDING OFFICER PARKINSON: Mr. Judge, had you finished?

MR. FELDMAN: You mean you're referring to the reasons I stated for my objections earlier?

MR. JUDGE: That that be typed into the transcript of the Button, Buckle, and Jewelry hearing.

MR. FELDMAN: I have no objection.

PRESIDING OFFICER PARKINSON: All right. Will you do that, Mr. Reporter, please?

THE REPORTER: Yes, sir.

(The material above referred to will be found on pages 1 to 16 of this transcript.)

MR. AMBRISTER: The Committee convened for the purpose of considering minimum wage rates in this industry in Puerto Rico on June 24, 1952 and held public hearings and considered the matter of minimum
549 wage rates for this industry. In its public hearings an opportunity was given to all interested persons to appear before the Committee and to offer evidence on the minimum wage rate or rates to be recommended by the Committee for this industry. Testimony was received under oath and an opportunity was given to all interested persons present and members of the Committee to cross examine witnesses who appeared before the Committee.

I would like to offer for the record at this time as Administrator's Exhibit No. 2, the Report and Recommendation of Special Industry Committee No. 12 for the establishment of minimum wage rates in the Button, Buckle, and Jewelry Industry in Puerto Rico to the Administrator of the Wage and Hour Division of the United States Department of Labor, dated August 1952.

I might say that in this report the following minimum wage rates were recommended for the separate divisions of this industry:

For the Pearl Button and Buckle Division the recommended minimum wage rate is 54 cents an hour;

For the Leather and Fabric Button and Buckle Division, 53 cents an hour;

For the Button and Buckle (other than pearl, leather, or fabric) and Bead Division, 48 cents an hour;

For the Rosary and Native Jewelry Division, 33 cents an hour;

For the Necklace, Bracelet, and Similar Jewelry Division, 36 cents an hour;

For the Precious Jewelry Division, 55 cents an hour;

For the Metal Expansion Watch Band Division, 60 cents an hour;

550 For the Metal and Plastic Jewelry and Miscellaneous Products Division, 50 cents an hour.

This report is offered for the purpose of showing the rates recommended by the Committee for this industry, and to show that the Committee investigated economic and competitive conditions in the industry as required by the Act and the Regulations, and to show that the Committee made its recommendations by the required majority vote and fulfilled all other legal requirements of the Act and Regulations.

I would ask at this time that Administrator's Exhibit No. 2 be accepted into evidence in this proceeding.

PRESIDING OFFICER PARKINSON: Give it to Mr. Feldman, please.

(Document handed to Mr. Feldman.)

MR. FELDMAN: Mr. Chairman, may I ask Mr. Ambrister some few questions connected with this report?

PRESIDING OFFICER PARKINSON: Do you object to the foundation that has been laid?

MR. FELDMAN: Well, it is for the purpose of developing that.

PRESIDING OFFICER PARKINSON: Mr. Ambrister, would you care to lay a further foundation? Do you want to testify on this, or do you want Mr. Judge or somebody else to testify?

MR. AMBRISTER: Well, it makes no difference, Mr. Parkinson.

I submit that a foundation has already been laid for the introduction.

PRESIDING OFFICER PARKINSON: All right. Permission granted.

MR. FELDMAN: Mr. Ambrister, do you know when the members of the Industry Committee signed the re-

port which included the recommendations covering
551 the Pearl Button and Buckle—

PRESIDING OFFICER PARKINSON: Mr. Feldman, does this run to the same point that you raised before?

MR. FELDMAN: Yes, sir.

PRESIDING OFFICER PARKINSON: It's being copied in here.

MR. FELDMAN: This was not before you.

PRESIDING OFFICER PARKINSON: All right. Proceed.

MR. FELDMAN: As a matter of fact,—

PRESIDING OFFICER PARKINSON: Proceed.

MR. FELDMAN: My question is—I will repeat it:

Will you tell me when the members of the Committee signed the report which you gave as dated August 1952 and which includes the recommendation of 54 cents for the Pearl Button and Buckle Industry, Button and Buckle Division?

MR. AMBRISTER: No, sir, I don't know the dates that that report was signed by those members.

MR. FELDMAN: Is this the report (indicating)?

MR. AMBRISTER: It is.

MR. FELDMAN: Will you show me the report and the signatures of the Industry Committee members, so far as it applies to the Button and Buckle Division?

(Mr. Ambrister indicates on document.)

MR. FELDMAN: Do you know whether these were signed after July 2, 1952?

MR. AMBRISTER: They were.

MR. FELDMAN: Can you give us—By whom
552 were they signed after July? By all the members?

MR. AMBRISTER: Yes, sir. By the members who voted for the different rates.

MR. FELDMAN: Well, in the case of the Button and Buckle Division, it was a unanimous vote, was it not?

MR. AMBRISTER: That's correct.

MR. FELDMAN: Therefore, your testimony is that it was signed by all the members of the Committee, public, industry, and labor, alike; is that correct?

MR. AMBRISTER: By those members of the Committee who heard the testimony in Puerto Rico; that is correct.

MR. FELDMAN: And it was signed after July 2, 1952?

MR. AMBRISTER: That is correct.

MR. FELDMAN: And was it signed by Mr. Fernando Villamil after July 2, 1952?

MR. AMBRISTER: It was.

MR. FELDMAN: And was it signed by Mr. W. Willard Wirtz after July 2, 1952?

MR. AMBRISTER: It was.

MR. FELDMAN: And you know that they resigned as members of this Committee on July 1? Do you know that fact?

MR. AMBRISTER: You mean resigned from the Special Industry Committee No. 12?

MR. FELDMAN: Insofar as the Button and Buckle Division thereof is concerned.

MR. AMBRISTER: The Button, Buckle, and
553 Jewelry Industry, the vote was taken—

MR. FELDMAN: July 1, 1952. I show it to you in the minutes of the session. I am now referring to Exhibit 1-F, page 19, and I am reading the following:

"Tuesday, July 1, 1952. Morning Session."—page 20, rather—

"Tuesday, July 1, 1952. Morning Session. Executive Session of the Committee.

"The Committee convened at 10:45 A.M. and resolved itself into executive session. The following members were present:

"For the Public: A. Cecil Snyder, Candido Oliveras, W. Willard Wirtz;

"For the Employees: Prudencio Rivera-Martinez, Walter J. Mason, and David Sternback;

"For the Employers: James G. Steger, Jaime Vick, and Fernando A. Villamil."

Now, it appears that during the day they passed a resolution regarding making a recommendation of 54 cents for the Pearl Buckle and Button Division; is that correct, sir?

MR. AMBRISTER: That is correct.

MR. FELDMAN: And that at the end of that meeting, the minutes contain the following statement:

"Mr. Wirtz and Mr. Villamil resigned from the Committee."

Is that correct?

MR. AMBRISTER: That is correct. After the vote was taken on this Button, Buckle,—

MR. FELDMAN: Yes. And is it correct that
554 on July 2, 1952 Mr. William R. McComb, Administrator of the Wage and Hour Division, accepted the resignations of W. Willard Wirtz as a public member of this Committee and Fernando A. Villamil as an employer member of this Special Industry Committee No. 12, and substituted in their place and stead the following persons: Reverend James A. Ferris, of Guayama, Puerto Rico, and Armando Bras, of San Juan, Puerto Rico? Is that correct?

MR. AMBRISTER: After Mr. Wirtz and Mr. Villamil had made their recommendations.

MR. FELDMAN: You already said that three times, and my question was whether or not this action was taken by the Administrator accepting the resignations on July 2, 1952 and appointing the persons whom I mentioned in their place and stead; is that correct?

MR. AMBRISTER: That was made by Administrative Order No. 423 on July 2, 1952; that is correct.

MR. FELDMAN: Now, you say that thereafter, after

July 2, 1952, notwithstanding, Messrs. Wirtz and Villamil signed the industry recommendation and report covering the recommendations which took place at the meeting on July 1, 1952; is that correct?

MR. AMBRISTER: Pursuant to the Regulations, Part 511.19, the rules applicable to Industry Committees, entitled "Report of Committees, Recommendations, and Reasons—"

MR. FELDMAN: Counsellor, I asked you a question that didn't call for a citation of authority or legal argument. I asked you whether or not it is not a fact that, even though they had resigned—Messrs. Wirtz and Villamil resigned on July 1, 1952 and their resigna-
555 tions were accepted on July 2, 1952, they nevertheless—these two gentlemen signed as members of Industry Advisory Committee No. 12 after July 2, 1952 a report upon which the recommendation is based which is now subject to consideration by the Administrator this morning? Is that a correct statement of fact?

MR. AMBRISTER: Well, if I may explain—

MR. FELDMAN: I didn't ask for that. I want to clear the record—

PRESIDING OFFICER PARKINSON: I think the record is already clear on it. I think you have all your basic material in there.

You recited the facts that are already in the record.

MR. FELDMAN: Now, I will ask you to show me in the exhibit that you are now offering the place where the signatures of Messrs. Wirtz and Villamil appear in connection with the recommendation of 54 cents for the Pearl Button and Buckle Industry, which is the subject of our investigation this morning?

MR. AMBRISTER: It appears after the recommendations in the report, on the original report which was submitted to Puerto Rico for the signatures of the Puerto Rican members. It is on page 6 right over his typewritten name.

MR. FELDMAN: I see. You are referring now to Fernando R. Villamil?

MR. AMBRISTER: Correct.

MR. FELDMAN: Now, will you show me where the signature of Mr. Wirtz appears?

MR. AMBRISTER: Mr. Wirtz's signature appears following the recommendations of the Committee
556 for this industry, right over his name—

MR. FELDMAN: On page 6 of a duplicate copy?

MR. AMBRISTER: —on page 6 of a duplicate copy of the report. That is correct.

MR. FELDMAN: Yes. And these were executed by these gentlemen after July 2, 1952, but you cannot give me the exact dates?

MR. AMBRISTER: That is correct.

MR. FELDMAN: Now, I ask you whether or not this is a copy of the report and recommendation dated August 1952 which was sent to the parties in interest, purporting to give a report and recommendation of the Industry Advisory Committee?

MR. AMBRISTER: It looks like the same report. It was mimeographed. Assuming that there are no typographical errors in that report, it is the same.

MR. FELDMAN: And that in August 1952—this is dated August 1952, and on page 1 thereof it has the name of Mr. Wirtz as a public member. In August 1952 he was not a public member; he had resigned and his resignation was accepted; is that correct?

MR. AMBRISTER: That is correct.

MR. FELDMAN: And the name of Fernando A. Villamil appears for the employers, and in August 1952 he was not a member of the Industry Committee, having resigned on July 1 with his resignation being accepted July 2, 1952; is that correct?

MR. AMBRISTER: I would like to—

MR. FELDMAN: Is that correct?

MR. AMBRISTER: No, it is not. I would like
557 to read the footnote from which you have taken
this information.

"Footnote 1. For the purpose of investigating the conditions in and recommending minimum wages for the Button, Buckle, and Jewelry Industry in Puerto Rico, the Committee was composed of the following representatives—"

MR. FELDMAN: At the time this recommendation was executed, Messrs. Wirtz and Villamil were not members of the Committee; is that correct?

PRESIDING OFFICER PARKINSON: Gentlemen, you're arguing. I think that the record is clear as to the basic material and your point is preserved. You may raise them in your brief.

MR. FELDMAN: I would like to make my statement, if I may, of objection. I have now concluded my preliminary inquiry for the purpose of laying a sufficient foundation, if I may be permitted to state it.

PRESIDING OFFICER PARKINSON: I believe I have heard you before haven't I, on this point?

MR. FELDMAN: I don't think you have heard me. First of all, when I realized that the Exhibits 1-A through 1-I did not contain the full report and recommendation, I realized that perhaps my objection was premature. Now I wish to make a statement which is much more clear, and I would like to amplify many of the statements which I made before which I think may have an important bearing and I think should be included in the record at this time. It will be very brief.

PRESIDING OFFICER PARKINSON: Well, let's be sure that there is no argument, please.

MR. FELDMAN: I want to state my reasons.

PRESIDING OFFICER PARKINSON: Just
558 the reasons. Please do not argue.

MR. FELDMAN: I am not arguing.

PRESIDING OFFICER PARKINSON: All right. Proceed.

So far a good bit of repetition is in the record. I have been trying to avoid that.

MR. FELDMAN: I object to the introduction into evidence and receipt at this hearing of the report and recommendation—the purported report and recommendation of the Special Industry Advisory Committee No. 12 for Puerto Rico, established pursuant to prior order of the Wage and Hour Administrator, on the ground that it fails to comply with the legal requirements necessary for a proper report at the time of submission of the same and recommendation to the Administrator.

I call attention to the Rules and Regulations of the Department covering the operations of Industry Advisory Committees, which are binding and have the full force and effect of law in this proceeding. I call attention specifically to the following statement. Section 5111.1 refers to the appointment of members, and it says that the members—

MR. GLASER: Excuse me. You mean 511.1?

MR. FELDMAN: 511.1. It has as its caption "The Appointment of Members." The Rules and Regulations provide for the appointment of members of an Industry Committee, and in the event of the death or resignation of any members thereof, the Administrator may appoint a successor to fill the vacancy so created. There is no continuation of membership on the Committee after resignation, as provision is amply made for the appointment of successors.

559 In other words, the person becomes functus officio. He ceases to exist as an official of this body and he cannot, therefore, perform any of its functions because provision is made—the Administrator provides for succession, and in this case not only did he act pursuant to it but he immediately accepted their resignations

and they ceased to exist on and after either July or July 2, at the latest, as members of this Committee.

Now, they did not—these two resigning members did not complete their duties, since the duty of an Industry Advisory Committee is to—its culmination of its functioning is the making of a report and, moreover, this is a step which must be taken before it comes to you for review.

PRESIDING OFFICER PARKINSON: You are not stating your reasons now. You are going into great detail. Your point is preserved.

MR. FELDMAN: May I finish?

PRESIDING OFFICER PARKINSON: If you have to take this into court, your point is preserved. If you want to convince the Administrator, you have an opportunity to argue before the Administrator. You have an opportunity to state your position and restate your position and argue your position in your brief, and I think that you are going to greater lengths than you need to to preserve your point.

MR. FELDMAN: Well, the first person to whom I must appeal is the Hearing Officer, and I am appealing to you in your judicial capacity as Hearing Officer to pass on a most vital point of whether or not you have before you a report and recommendation in valid form upon which to hold a hearing. I can think of nothing more vital or important for your consideration in the first instance, and I think it is your obligation to pass upon it and I would like to finish my reasons as to why I think you should refuse to accept into evidence the report and recommendation offered by the Administrator.

PRESIDING OFFICER PARKINSON: I am going to receive it in evidence and let somebody else pass on it.

The receipt of erroneous evidence in this hearing, I take it, is not error. I am going to let it go to the weight and I am going to let the Administrator pass on it.

MR. FELDMAN: I think—with great respect, sir, I think—

PRESIDING OFFICER PARKINSON: You object to my statement. Your objection is overruled.

MR. FELDMAN: I do object.

PRESIDING OFFICER PARKINSON: All right.

MR. FELDMAN: Will you let me complete my reasons as to why you should refuse to receive the exhibit?

PRESIDING OFFICER PARKINSON: Yes.

MR. FELDMAN: Section 511.19 in the Rules and Regulations provides—

PRESIDING OFFICER PARKINSON: Incidentally, the Rules of Practice provide there shall be no argument on a matter of this type.

MR. FELDMAN: This is not argument. I am just giving my reasons for—or making my ground and you have a perfect right—

PRESIDING OFFICER PARKINSON: Well, you're explaining it a lot and I think you're going beyond that, but proceed.

MR. FELDMAN: Section 511.19 refers to the report of the Committee and the recommendations and reasons, and it says that:

561 "Upon the completion of its investigation, the Industry Committee shall submit to the Administrator a report containing its recommendations, together with a statement of the reasons supporting such recommendations. No such recommendation shall be made by the Committee unless concurred in by a vote of not less than a majority of all its members."

That goes to the question of when the recommendation can be filed.

Now, it says:

"A copy of such report shall be signed by each member of the Committee who approves it," and I say that two persons who signed this report were not members at the time that they signed the report. They had no more

standing than I would have had or anybody else on the street to sign that document.

PRESIDING OFFICER PARKINSON: You have made that statement repeatedly.

MR. FELDMAN: And for that reason, sir, I say that the report and recommendation of Industry Advisory Committee No. 12 is nugatory and null and void and I object to its admissibility and receipt in evidence.

PRESIDING OFFICER PARKINSON: Your objection is overruled.

MR. FELDMAN: I will take an exception.

(Whereupon, Administrator's Exhibit No. 2 was received in evidence.)

PRESIDING OFFICER PARKINSON: Are there any other preliminary matters?

MR. AMBRISTER: Yes, sir.

I would now like to introduce into evidence Administrator's Exhibit No. 3, which is a copy of the transcript of the public hearing held before Special Industry Committee No. 12 for Puerto Rico for this industry. The dates of the Committee's consideration of this Button, Buckle, and Jewelry Industry in Puerto Rico are June 24 through June 26, 1952, and also included in this Administrator's Exhibit No. 3 are exhibits and other data submitted for the Committee's consideration.

I would now like to ask that Administrator's Exhibit No. 3 be received in evidence.

PRESIDING OFFICER PARKINSON: Any objection?

(No response.)

PRESIDING OFFICER PARKINSON: I hear none. Received.

(Whereupon, Administrator's Exhibit No. 3 was received in evidence.)

MR. AMBRISTER: I would now like to call Mr. Hans Reif to the stand to testify, please.

Whereupon,

Hans Reif,

was called as a witness on behalf of the Administrator and, being first duly sworn, was examined and testified as follows:

PRESIDING OFFICER PARKINSON: Mr. Glaser, did you have a question?

MR. GLASER: Mr. Parkinson, before Mr. Reif presents his statement for the record, I don't recall whether, in addition to overruling Mr. Feldman's objection to the introduction in the record of the report and recommendation of the Committee for the Button, Buckle, and Jewelry Industry, that report was formally received into the record. If it was not formally received into the record,

I would respectfully request that that be done at 563 this time.

PRESIDING OFFICER PARKINSON: All exhibits offered hereby are received into the record.

MR. FELDMAN: Over the objections which were made.

PRESIDING OFFICER PARKINSON: Surely.

All right, Mr. Ambrister.

Direct Examination

BY MR. AMBRISTER:

Q Mr. Reif, will you please state your full name and title for the record? A My name is Hans Reif. I am an economist in the Minimum Wage and Home Work Branch, Division of Wage Determinations.

Q I now show you a copy of a document published by the Division of Wage Determinations, dated June 1952, entitled "The Button, Buckle, and Jewelry Industry in Puerto Rico."

Are you familiar with this document? A Yes. This report, entitled Administrator's Exhibit No. 4, was pre-

pared by me under the general supervision of Mr. Thomas J. Judge, and gives statistical and other economic data which it was believed would be helpful to the Committee in performing its statutory functions.

The report contains a discussion of the definition of the industry and of the previous Industry Committee action therefor. It describes the products which are included in the definition, production of such goods on the Island, competitive relationships with mainland and foreign areas, and detailed information on the wage rates paid in Puerto Rico in the manufacture of such products.

564 This report was introduced into evidence before Special Industry Committee No. 12 for Puerto Rico and became a part of the record of the proceedings in the Button, Buckle, and Jewelry Industry.

Additions and corrections to this report which were read into the record by Mr. Judge at the beginning of the public hearings in Puerto Rico are included in this copy of the report.

Q Do you have any supplemental data which you would like to introduce in connection with this hearing?

A Yes, I have.

Q Would you please briefly describe what you have?

PRESIDING OFFICER PARKINSON: Let's mark it for identification, first, if you will, please.

MR. AMBRISTER: Yes, sir. I would like to mark for identification the economic report which Mr. Reif has just described as Administrator's Exhibit No. 4.

I would like to mark for identification purposes the supplemental data which he is now going to describe as Administrator's Exhibit No. 5, for identification.

PRESIDING OFFICER PARKINSON: Let's make it 4-A to be consistent, since it refers to the same exhibit.

THE WITNESS: There will be some data included here which was not a part—

PRESIDING OFFICER PARKINSON: All right; Administrator's Exhibit No. 5.

THE WITNESS: Table No. 1 of Administrator's Exhibit No.—

PRESIDING OFFICER PARKINSON: Do you have a copy, Mr. Feldman?

565 MR. FELDMAN: It was given to me about 15 minutes ago for the first time.

PRESIDING OFFICER PARKINSON: All right. Proceed.

THE WITNESS: Table No. 1 of Administrator's Exhibit No. 5 is a supplement to Table 1 of the economic report, and shows shipments of mother-of-pearl and other unmanufactured shells from the mainland to Puerto Rico, August through October 1951.

Table No. 2 supplements Table No. 2 of the economic report and compares shipments of finished and unfinished ocean pearl or shell buttons from Puerto Rico to the continental United States in the first seven months of 1952 and 1951. Shipments of finished ocean pearl buttons, January through July 1951, amounted to 608,239 gross, valued at \$806,717. Shipments during the first seven months of 1952 of finished ocean pearl buttons amounted to 485,803 gross, valued at \$682,407. The average value per gross in the 1951 period was \$1.33; in the 1952 period, \$1.41.

Shipments of unfinished ocean pearl or shell buttons in the first seven months of 1951 amounted to 85,161 pounds, valued at \$166,361; average value per pound, \$1.95. Shipments during the first seven months of 1952 amounted to 125,307 pounds—

PRESIDING OFFICER PARKINSON: I wonder, since the exhibit is in evidence, or is being offered, if you need to go into that much detail? It's part of the record and will be one of the exhibits.

MR. AMBRISTER: With that introduction of the

tables thus far, summarized by Mr. Reif, if there is no objection I would request that this exhibit be received in evidence at this time, along with Administrator's Exhibit No. 4.

PRESIDING OFFICER PARKINSON: Any objection?

MR. FELDMAN: I have no objection. I take it we will be given an opportunity to ask some questions.

PRESIDING OFFICER PARKINSON: Surely.

They are received in evidence, Exhibits 4 and 5.

(Whereupon, Administrator's Exhibits Nos. 4 and 5 were received in evidence.)

THE WITNESS: I would like to add some additional information.

PRESIDING OFFICER PARKINSON: Just a minute. Let's ask some questions.

Do you have a question you want to ask?

MR. AMBRISTER: Yes.

BY MR. AMBRISTER:

Q I would just like to ask Mr. Reif if he has any other information which he would like to give at this time? A Yes. If you will refer to Table No. 9 in the supplement, Table No. 9 on the first page shows shipments of glass buttons for the first six months in 1951 and in 1952.

You will note that imports of glass buttons amounted to 416,587 gross, valued at \$290,600, in the first six months of 1951, and 535,885 gross, valued at \$441,247, in the first six months of 1952.

According to testimony presented at the public hearing in Puerto Rico, it is primarily certain types of glass buttons imported from Japan which compete with the plastic buttons manufactured in Puerto Rico.

567 Therefore, I would like to read into the record data pertaining to shipments of glass buttons from Japan to the United States. There are not very many figures, Mr. Examiner.

Following World War II Japan resumed exporting glass buttons to the United States in 1949, when shipments amounted to 44,851 gross, valued at \$18,527; average value, 41 cents. 1950, 148,719 gross, valued at \$65,036; average value per gross, 44 cents. 1951, 277,067 gross, valued at \$125,273; average value per gross, 45 cents. In the first six months of 1951 shipments of glass buttons from Japan amounted to 162,925 gross, valued at \$71,529; average value per gross, 44 cents. In January of 1952 shipments of glass buttons amounted to 27,982 gross, valued at \$12,594; average value per gross, 45 cents. In February 1952 shipments were 24,056 gross, valued at \$11,205; average value per gross, 47 cents. In the next four months shipments were not reported separately, indicating that they were valued at less than \$10,000 in each of the four months.

This data was obtained from the monthly census publication, U. S. Imports of Merchandise for Consumption.

I have one more statement I would like to enter into the record. It pertains to learners certificates which are currently in effect in the ocean pearl and shell button industry.

In the continental United States there is no learners certificate currently in effect in any ocean pearl manufacturing plant. There is one learners certificate which was granted to a fresh water shell manufacturing
568 plant in August 1952 and which expires in January 1953. The learners certificate calls for the employment of 3 learners in the positions or occupations as cutters or finished button sorters, and its length is 480 hours. It calls for the payment of 65 cents an hour for the first 320 hours and 70 cents an hour for the remaining 160 hours.

In addition to this learners certificate, a learners certificate was granted July 9, 1952 to the Virgin Islands Button Company. The certificate allows the employment

of 15 learners in the occupation of cutters. It is for 480 hours at a rate of 35 cents an hour.

On September 29, 1952 a learners certificate was granted to the Manati Pearl Works. This certificate calls for the employment of 25 learners in the occupation of cutters, and it sets a rate of 35 cents for 320 hours. This certificate expires March 28, 1953.

PRESIDING OFFICER PARKINSON: Any questions?

MR. FELDMAN: Yes.

Cross Examination

BY MR. FELDMAN:

Q Mr. Reif, I understand that you developed the report which was filed with the Industry Advisory Committee and which has now been implemented by the additional supplements? A That is correct.

PRESIDING OFFICER PARKINSON: Before you start on that, let's go off the record.

(Discussion off the record.)

569 PRESIDING OFFICER PARKINSON: Back on the record.

MR. STEINBERG: May I make a short statement?

I filed a notice of appearance this morning for this hearing on behalf of Dugan Manufacturing Company.

PRESIDING OFFICER PARKINSON: Let's see; you are counsel?

MR. STEINBERG: Yes, sir.

PRESIDING OFFICER PARKINSON: Perhaps you had better be sworn.

Whereupon:

Morris B. Steinberg,

called as a witness on behalf of Dugan Manufacturing Company and Phil H. Harris, being first duly sworn, was examined and testified as follows:

Direct Examination

PRESIDING OFFICER PARKINSON: All right, Mr. Steinberg.

THE WITNESS: I filed a notice of appearance this morning in connection with this hearing on behalf of Dugan Manufacturing Company of Boston, Massachusetts and Phil H. Harris, of New York City, New York, both manufacturers of leather buttons and leather buckles.

I understand—if I am not correct, I would like to be corrected—that there is no one else here in connection with leather buttons and leather buckles, which are a minor part of this report. If there is no one else here, I wish to just make one motion, if I may call it that.

Mr. Harris, of New York City, and I attended the hearing in San Juan, Puerto Rico during the end of June or the early part of July 1952 and we heard the testimony and evidence adduced there, and in view of
570 all the evidence adduced and the testimony offered there both Mr. Harris and Mr. Dugan, of Dugan Manufacturing Company, wish to approve or evidence their approval of the report of Committee No. 12, and wish that approval to be shown on the record, as I assume it will, and wish to ask the Commissioner through you to accept the report insofar as it relates to the wage rate to be fixed in the leather button and leather buckle and also fabric buttons, at the rate fixed or recommended by the Committee No. 12, which is 53 cents per hour.

PRESIDING OFFICER PARKINSON: Any questions?

MR. AMBRISTER: No questions.

PRESIDING OFFICER PARKINSON: Thank you, Mr. Steinberg.

MR. STEINBERG: Thank you, Mr. Hearing Commissioner.

(Witness excused.)

Whereupon

Hans Reif,

resumed the stand and was examined and testified further as follows:

PRESIDING OFFICER PARKINSON: You may proceed with cross examination of the witness, Mr. Feldman.

Cross Examination (resumed)

BY MR. FELDMAN:

Q Mr. Reif, when you began to study the operations of the ocean pearl button manufacturing industry in Puerto Rico, prior to that through your investigation had you any previous knowledge of the industry through independent research of any kind? A No, sir.

571 Q It was entirely new to you? A That's right, sir.

Q And when you approached the investigation of the industry in all of its phases, did you have any assistance or aid from anybody with regard to the manner in which you would approach it? For example, what industry, what parallel industries you would investigate and how you would frame the report, and so on? A Yes, sir. As you might know, there have been previous economic reports prepared on this particular industry.

Q That's correct. A And I had the benefit of the experience of persons who participated in the compilation of the previous reports.

Q Yes. Now, it was on the basis of that data and the results of your own investigation that constituted a foundation for the report itself? A Yes, sir.

Q Now, throughout this report, while you mention in passing other button manufacturing industries, such as plastics, importation of buttons from the Philippines and Japan, and now you have added some information with regard to glass buttons, you, however, went into greater detail with regard to comparisons and figures and opera-

tional figures, production, volume, and units manufactured of fresh water as against ocean pearl.

Now, was that as a result of your conclusion that this was a direct competitive picture? For example, I will refer you to the schedule, Table 3, and there you give comparisons of quantity and value of pearl or shell but-

tons in detail for the years '39 through '51. Then,
572 again, you devote an analysis to costs, production costs of mainland producers of ocean pearl and the Puerto Rican producers of ocean pearl, and you go into costs of production of fresh water. You go into some labor costs, analysis of labor rates. Is that correct?

A I do not see any breakdown on the costs of manufacture of the fresh water buttons, no, sir.

Q No. I am talking about—You do give some information with regard—detailed information with regard to the operation of the fresh water that you do not give for any other industry.

Now, is there any special reason why you thought that fresh water button manufacturing was the industry most closely competitive with that of ocean pearl? In other words, was that your starting point? A Mr. Feldman, I don't quite follow you. What information do you refer to, specifically, when you state that I present the information for ocean pearl—for fresh water shell that I do not present for other industries?

Q For example, let's turn to Table 3—not Table 3; I'm sorry. Table 2—Table 3; I'm sorry; opposite page 9. Do you have it? A Yes, I have that.

Q Now, you give a comparison of quantity and value of pearl or shell buttons produced on the mainland and then you notice under the mainland you have mainland fresh water shell buttons and then you have mainland ocean pearl. Now, you haven't given us information like that with regard to any other button products. have you.

in that detail? A No, sir, for the main reason that that information is not available.

573 Q So, therefore, the so-called accentuation, if I may properly use that term, of fresh water as it appears from time to time was merely because of the availability of more data concerning fresh water than because of your belief that this was a direct competitive industry on which special reference had been made. Is that correct? A Mr. Feldman, this report—I'm just trying to find it—contains a statement as to how we understood the competitive relationship between fresh water and ocean pearl buttons. I am just trying to find that.

Q I know that statement. I am only referring to the fact that in the tables you went into greater specificity, making parallel columns by year, of similar items referring to fresh water and pearl, and your answer is that you did not do that necessarily to emphasize that there was a closer competitiveness between these two, but because such specific data was available and obtainable?

A The competitive relationship as it was understood by myself, and as Mr. Judge concurred, is the relationship that is presented in this study.

Q You got it from Mr. Judge, then, the theory of competitiveness, vis-a-vis fresh water water and ocean pearl?

MR. FELDMAN: No, Mr. Judge; let him testify.

PRESIDING OFFICER PARKINSON: No, Mr. Judge, you shouldn't correct him. If you have something to state, you may do so afterwards.

THE WITNESS: It is difficult to state, and I cannot answer this question as you put it, whether this information came directly from Mr. Judge or whether it was advanced by myself and approved by Mr. Judge. That I do not recall, Mr. Feldman.

574 BY MR. FELDMAN:

Q You appreciate that this report was received and given great weight by the Committee; is that correct?

A Yes, sir.

Q And such reports are given great weight and they are intended to be.

Your attitude was wholly impartial in this situation, was it not? A It was, sir.

Q Therefore, I am asking you, since the committeemen might have been ignorant entirely of the story, they might have first learned of the alleged competition between fresh water and ocean pearl from you or your report, and read this where you refer to it, where you got the idea, because after all you prepared this report, that there was direct competition between fresh water and emphasized it as you did in this report?

PRESIDING OFFICER PARKINSON: Just a minute. What's the question?

MR. FELDMAN: The question is: From what source did he obtain the knowledge or information which led him to report, make his economic report in a way in which to emphasize the competition between fresh water and ocean pearl as two competing industries.

PRESIDING OFFICER PARKINSON: Did you have an answer?

THE WITNESS: Yes. If you will recall, in the economic report which was prepared for the previous Industry Committee—I have it here—if you will check Table 11 of that report you will find—

PRESIDING OFFICER PARKINSON: What page, please?

THE WITNESS: Page 22. This was a reported entitled "The Button, Buckle, and Jewelry Industry in Puerto Rico," and it was prepared in November 575 1949.

BY MR. FELDMAN:

Q Yes. That was the reason that you followed through on that? A That's right.

Q You made no independent investigation to determine whether there was competitiveness beyond this prior

data? A I must repeat here that my opinion of the extent of the competition that exists between fresh water and ocean pearl buttons is one in which Mr. Judge concurred; since he supervised the study, that is included in this report.

Q Did you receive any information, directly or indirectly, from fresh water pearl manufacturers or trade groups at the time or prior to your making of this report which influenced your conclusions regarding competition?

A Mr. Feldman, I have not worked here very long. I am not sure whether I have received and seen all the correspondence that has come in. Mr. Judge has been engaged in this type of work for several years and, therefore, I am unable to give you a specific answer. If you will ask the question of Mr. Judge, I am quite sure—

Q Do you know whether Mr. Judge received such information from fresh water pearl manufacturers or trade organizations? A I don't know, sir. You would have to address that question to Mr. Judge.

Q I asked you if you know it, and the answer is No? A No.

Q Now, you proceeded in this report to make
576 some investigation of employment in the Island, did you not? A That's right, sir.

Q I now refer you to page 6. A Yes, sir.

Q And the statement there that says:

"A survey made by the Wage and Hour Division in January 1952 indicated a total of 428 employees engaged in the manufacture of ocean pearl buttons in Puerto Rico. The same number of workers were employed in this industry in November 1949, when it was considered by Special Industry Committee No. 6."

Did you make an investigation into whether or not there had been a reduction in the number of hours of employment? A No, sir. Let me explain to you on what basis the total number of employees, namely, 428, was obtained—

Q I know how it was obtained.

PRESIDING OFFICER PARKINSON: Just let him finish. He has answered your question and he wants to make this explanation.

MR. FELDMAN: Excuse me. I thought he was not answering.

PRESIDING OFFICER PARKINSON: I think he answered your question. I think he said "No, sir." Is that right, Mr. Reporter?

THE REPORTER: Yes, sir.

THE WITNESS: On page 46—and I might say that the data we have here was obtained from payrolls which were submitted to us by the companies during the month indicated—it shows that the average length of the work-week during that period, during the period covered
577 by the payroll was 36.6 hours.

BY MR. FELDMAN:

Q Did you—

PRESIDING OFFICER PARKINSON: I don't believe he had finished.

MR. FELDMAN: I'm sorry.

THE WITNESS: I have answered the question.

BY MR. FELDMAN:

Q If there had been a substantial reduction in the average hours worked per week, the figure of 428 in 1952 and the identical figure of 428 for 1949 would have been meaningless, or might have even been confusing to a person reading this as the Industry Advisory Committee did, would it not?

In other words, they would be comparing two things that are not comparable? A That's right, sir.

Q And if that is a fact, then, this statement could have created a wrong impression, if the statement is true that I have made that there was a substantial reduction in hours? In other words, if we took all the hours worked and divided them by 40 and we would have lesser man weeks worked, it would indicate that the company is

working on a system of distributing work in the slack season; isn't that correct, if there was no change in employment? A I will answer your question this way: On Table 28 we have specifically presented the average length of the work week. I looked before whether similar data was available from the previous study, and it was not.

578 Before you continue questioning, I might read a part of the foreword:

"This study does not, however, purport to constitute a complete economic analysis of the industry, but contains such currently available information as is believed to be of interest to the Committee in its investigation of the industry's economic and competitive conditions."

Q Now, Mr. Reif, if you were a member of the Industry Advisory Committee and had made no economic survey, and the Government handed you a report similar to the one you prepared, and you turned to page 6 and you saw a statement that there were 428 employees in November 1949 and the same identical number in January 1952, you would believe that there was stability of employment? A I would not reach any conclusions unless I had additional data.

Q You as an economist or you as an industry member or a public member? How are you answering? A How do you ask me?

Q As a public member. A Well, I'm afraid I can't answer that question, since I'm not a public member.

Q But this was directed to their attention. A This was directed to any party who is interested in this industry.

Q Now, I'm going to make this statement to you and ask you what comments you have to make on it.

579 If I were to tell you that by the sheerest coincidence that would make the odds on it incalculable the two periods that you selected which gave a total in

each instance for the three companies employing people of 428 for a specified work week, November 1949, some week in that period, or January 1952,—because it says “survey made in that month”—You say “of that month,” and I don’t know whether it’s week—if I were to tell you that at no time, for example, was there an equivalent number in any one of the plants, standard number from month to month, but that it fluctuated 50 to 60 per cent through the period, upward and downward, so that it was the sheerest, the most extraordinary coincidence that you could have gotten the exact number, would you accept that statement? A Would you repeat that question, please?

Q All right. You took a week in November 1949 and you totaled up the payroll of the three companies and you came to 428 employees. You took a week in January 1952 and you found the same number. If I were to tell you that at no week in between that period of November 1949 to January 1952 or prior thereto was there ever a number equal to 428 representing the total, and that it fell down as much as 50 per cent, and that it was irregular throughout and constantly lowering, in terms of hours worked per week, would you accept that as a true statement? A I would have to, if you show me the payroll records.

Q We propose to do it. A Then it is factual material which will enter into the record.

Q And it would certainly throw a new light on this statement of 428, would it not? A Mr. Feldman, 580 if you will read through this report, the data is qualified.

Q Yes. A I did not make a general statement that employment remained the same throughout. The only thing it says there is that during this specific month employment was such and such.

Q What was the purpose of that comparison? A Mr. Feldman,—

Q Was it for the purpose of showing stable—
PRESIDING OFFICER PARKINSON: Let him answer.

MR. FELDMAN: Oh, I'm sorry. It had to have meaning.

THE WITNESS: It presented factual material which might be of interest to the Committee.

BY MR. FELDMAN:

Q Of what interest? What purpose would it serve?

PRESIDING OFFICER PARKINSON: I think this is a good place to adjourn for lunch until 1:30.

(Whereupon, at 12:30 P.M. a recess was taken until 1:30 P.M.)

581

AFTERNOON SESSION

October 7, 1952

1:30 P. M.

PRESIDING OFFICER PARKINSON: We will proceed with the cross examination.

Whereupon

Mr. Hans G. Reif

resumed the stand and testified further as follows:

Cross Examination (Further)

BY MR. FELDMAN:

Q I think there was a question I asked you before we adjourned regarding the statement which appeared in the economic report on the subject of employment, comparative figures taken during the months of November, 1949 to January, 1952, and I asked you if you could tell me what significance you attached to that statement by putting it in there. A Mr. Feldman, these were—this was factual data that we had on hand at the time. In addition to this I might point out that some more employment data is listed on Appendix Table "F" showing employment at various times from 1937 until December of

1951—January of 1952. It is the newest economic report (indicating).

Q Was that before the committee? A That was part of the record, yes. Now, let me point out another thing too. Mr. Ambrister, may I have the transcript.

(Mr. Ambrister hands instrument to the witness.)

582 Q That gives the number of employees and it shows 428 in December, 1952, and you can see 358 in the 1941-42 period. A Right.

Q Yet you made a comparison of 428 and 428, just picking out spot places where either by coincidence or just merely on an extraordinarily bullseye shot you got the same figures. A Mr. Feldman, are you acquainted with Administrator's Exhibit No. 2 which was introduced by Mr. Judge in Puerto Rico?

Q Yes. A Do you know how that table reads?

Q What does it say? A It reads estimated number of button manufacturers, average weekly hours and gross hourly and weekly earnings of said workers in Puerto Rico, 1950—that's 1950 to the first four months of 1952. The source is the Bureau of Labor Statistics, Puerto Rico Department of Labor.

Q But you didn't have that comment in your opening statement at all. There you said it was 428, November of 1949, and 428 in January of 1952, which would lead anyone to believe reading it, as businessmen do when they read a report, they read the summaries because it saves them the trouble of having to make exhaustive investigations of the chart, and they have come to the conclusion, it seems to me—am I correct in saying—there was stability of employment at the same level between 1949 and 1952 on the basis of your statement.

583 PRESIDING OFFICER PARKINSON: That's repetition.

THE WITNESS: Mr. Feldman, I have answered your question; I have pointed out that prior to the start of

the hearing, or at the start of the hearing in Puerto Rico, information was introduced into the record showing the number of employees employed each month from January, 1950 to March, 1952. In each month it shows estimated number of production workers, average weekly earnings, average weekly hours and average hourly earnings.

BY MR. FELDMAN:

Q Isn't it true that the typewritten portion of this economic report, the one that was submitted to the industry committee, was headed by paragraph headings intended to summarize the data? A This economic report, as I stated before, presents whatever factual material that we may have available—

Q I asked you if it intended to summarize the data. A And I answered your question by saying that it presents statistical and economic data on the industry for the purpose of assisting the committee in the performance of its functions.

MR. FELDMAN: I move to strike the answer, and I ask the witness be directed to answer as to whether or not these paragraphs were intended to summarize the data.

MR. AMBRISTER: I submit that the witness has already answered the question several times.

PRESIDING OFFICER PARKINSON: I think the witness has stated what it is. Is that the answer you wish to make on it?

584 THE WITNESS: That's the answer I wish to make; yes, sir.

BY MR. FELDMAN:

Q Then would you say these are not summaries, these paragraphs that appear, the typewritten portions beginning with pages—page 1 of the economic report straight through, the typewritten portion of it which contains various headings? For example, in other places you summarize the information and you make references to

the tables and to other information in support of statements that appear here, but in that employment you make no reference to appendices or other data which might reflect information contrary to the statement that appears under the heading of employment. Can you tell me why you didn't? A I don't follow your question. Would you repeat that please?

Q All right. If you will turn to page 2 you will see "Production". It runs from the bottom of page 2 through pages 3 and on. You will see, for example, at the middle of page 3, after you give a statement, you refer to table 2, the fourth paragraph; and in the third paragraph you refer to table 1 in which it appears this is a summarization of the production information, and for more detailed information from which the summary is drawn you refer to, you refer the reader to the tables contained in the report. Now, under employment you did not make any reference to any tables or other data in the report dealing with employment. Why didn't you do that? Isn't employment an important, integral part of an economic study involving minimum wages? A Which question did you want me to answer?

585 Q Answer the first, why you didn't make reference to the tables as you did in the other paragraphs where you summarized the data? A I certainly cannot make reference to a table which is not there.

Q You have in this report an analysis of the particular week in question. Didn't you refer to it just a few seconds ago in which you said—you even referred me to it, telling me that I could find in the latter part of the book on page 46 a table entitled "Distribution of employees according to average . . ."—you make no reference to any tables, and in Appendix "F" you make no—you make no reference to Appendix "F".

PRESIDING OFFICER PARKINSON: If you would just ask a question—

MR. FELDMAN: He asked me a question, what tables are referred to, and I have answered it.

PRESIDING OFFICER PARKINSON: Make your questions as brief as possible and split them up.

BY MR. FELDMAN:

Q My question is: Why did you not include under employment on page 6 references to the tables, and whether or not it was intended to be a summarization of the employment information contained in this report?

A In writing this report we made two sections, one, employment, and one, wage data. Table 28 that you referred to is described in the wage data section.

586 Q I asked you whether Appendix Table "F" does not contain the following title, "Cross average hourly earnings, employment . . .". Does it? Is that the title to Appendix "F" on page 59?

PRESIDING OFFICER PARKINSON: That speaks for itself.

BY MR. FELDMAN:

Q And therefore, wasn't that referred to under the employment paragraph of your report? A This paragraph dealing with employment on page 6 states what the employment was in January, 1952 at the time the Division made a wage survey. It also states the employment in November, 1949 at which time the Division also made a wage survey. That is all this paragraph states.

Q And this caption, the word "Employment"? A That is true.

Q Do you have any other heading of employment in your report, a paragraph headed with the word "employment"?

PRESIDING OFFICER PARKINSON: The report speaks for itself.

MR. FELDMAN: I say there isn't, and I suggest that fact to you; am I correct?

PRESIDING OFFICER PARKINSON: Again I state the report speaks for itself.

MR. AMBRISTER: Page 25—

MR. FELDMAN: Are you testifying?

THE WITNESS: I believe, for example, on
587 page 29 you will find a statement of employment—

BY MR. FELDMAN:

Q Caribbean Pearl Corporation. We are not dealing with that company; are we, at this hearing? A You asked me if any other statements, whether any other paragraphs were included in this report headed by the word "Employment", and I am pointing out—

Q Come, come, Mr. Reif—

PRESIDING OFFICER PARKINSON: Just ask a question, please.

BY MR. FELDMAN:

Q You know I am referring to employment in the Button and Buckle Manufacturing Industry, pertinent to buttons and buckles, the ocean pearl, to be very specific.

PRESIDING OFFICER PARKINSON: You needn't answer that question. That matter on that question has been sufficiently dealt with.

BY MR. FELDMAN:

Q Are you willing to amplify or change your statement with regard to employment by telling us, if you know now, the number of employees in the industry, month by month, from November, 1949 to January of 1952? Do you know now? A Do I know what?

Q The number of employees that were employed each week from November, 1949 to January, 1952. Do you know that information? A That information is part of the record.

588 Q Do you know it? A The information is part of the record. I can read it or you may read it.

Q Now, does it show a change in the number of employees between 428 and 428, between November, 1949 and January, 1952?

PRESIDING OFFICER PARKINSON: Again I state the record speaks for itself. You needn't answer the question.

BY MR. FELDMAN:

Q Do you have any record of the average hours per week worked between November of 1949 and January, 1952 in the ocean pearl button industry? A Will you look at this report, please (indicating)?

PRESIDING OFFICER PARKINSON: Just a minute; answer his question.

BY MR. FELDMAN:

Q Do you have the answer to my question? A Will you repeat your question?

Q Can you tell us the average number of hours worked between November of 1949 and January of 1952 in the ocean pearl button manufacturing industry in Puerto Rico? A My information is the same as that included in this exhibit (indicating).

Q You are referring to Administrator's Exhibit No. 2 which was handed up at the hearing? A Yes, sir.

589 Q And you had that data at the time you prepared this report? A No, sir; I did not have that data when this report was prepared otherwise I certainly would have included it in the report.

Q I point out to you that you have fluctuations from 36 hours to as low as 29 hours a week during this intervening period; is that correct? A The record speaks for itself, sir.

Q I ask you to please turn to the table where you compared the quantity and quality of pearl buttons produced on the mainland and shipments of pearl buttons from Puerto Rico to the mainland, 1939 to 1950. (Strike that question, sir.)

In making table 2 on Shipments of Finished and Unfinished Ocean Pearl or Shell Buttons from Puerto Rico to the United States, do you know when a third company

began operations in Puerto Rico? A According to the economic report, and I refer to page 2, the third company is located in Manati where it commenced operations in the early part of 1948.

Q Why didn't you indicate in table 2 that the increases in the shipments of finished and unfinished ocean pearl and shell buttons after 1948 were attributable in whole or in part to the additional productive capacity and facilities of the new company? A I refer you to the bottom paragraph on page 3.

Q I ask you, in that chart, table 2. In your footnotes you give source of material. I refer you to table 1 where you have indicated source a, b, and c, where you
590 have indicated all sorts of minor details to clarify the report. Why did you not include them on table 2, a footnote indicating that in '48 and thereafter a third company entered the picture and increased the shipments of ocean pearl and shell buttons at least to the extent of its production?

I withdraw the question.

Would it not appear from a reading of table 2 that the development of the finished and unfinished products, the shipments stem from the extension of existing facilities rather than from the addition of a new plant? A Mr. Feldman, I read on the bottom of page 3 the economic report, "In the following two years—and I am referring to now, 1949 and 1950—as the newest firm began full operations, shipments of button blanks increased rapidly, and reached 294,000 pounds valued at about \$515,000 in 1950."

Q You did not put this footnote, however, on table 2, did you; and you cannot give us an explanation why you didn't do it; and you have footnotes throughout explaining any changes that might have occurred in the other tables? A The information is presented not as a footnote, but in the actual report because generally speaking

the more important information is generally mentioned in a text rather than in a footnote.

Q Is that true of this section on employment? A Yes.

Q I ask you now to refer to page 3, since you are referring to the text, and I read you this paragraph
591 of your typewritten portion of the report: "The quantity of shells shipped to Puerto Rico remained at about the same level in 1946 and 1947 but increased to almost 1.8 million pounds in 1948. The sharp decline in shipments in 1949 was principally due to the large inventory of raw materials held by Puerto Rican manufacturers. Shipments rose to more than 2.5 million pounds in 1950 and continued at a comparable rate for the first six months in 1951." You make no mention there, do you, and why not, of the new company that entered the field to produce there at that point?

PRESIDING OFFICER PARKINSON: Now you have two questions. Break it down, please.

MR. FELDMAN: I read this statement, and I asked him why he did not mention at that point that the increase in the quantities of shells shipped to the island after 1948 was attributable to the third company operating there.

THE WITNESS: In the third paragraph of the economic report on page 2 I state specifically that the third company is located in Manati where it commenced operations in the early part of 1948. I state again, at the bottom of page 2, that another company began operations about this time and began production.

BY MR. FELDMAN:

Q The bottom of page 2? A The bottom of page 3.

Q You are referring there to a shipment of button blanks and finished pearl from Puerto Rico to the
592 States, but you say nothing when it came to the shipment of raw materials to the island. You did not make the explanation. A Generally speaking, I be-

lieve it is necessary in order to cut button blanks that one must first have have shells.

Q Did you come to the conclusion that there was an increase in the production of ocean pearl in the island during a period when there were declines in the domestic industry? Did you come to that conclusion in your report? A Mr. Feldman, I did not come to any conclusions in this report. I presented factual data.

Q Did you make that statement?

PRESIDING OFFICER PARKINSON: Where? If you are referring to the report, the report speaks for itself.

BY MR. FELDMAN:

Q All right then. The third paragraph on page 3 reads: "In the early post-war period, 1946-1948, more than 80 percent of shipments of unmanufactured shells from the mainland to Puerto Rico consisted of shells other than mother-of-pearl (See table 1). Since then, the value of shipments of shells to Puerto Rico has risen substantially, while the value of foreign imports of unmanufactured shells into the United States declined between 1947 and 1950, increasing again slightly in 1951. This would indicate that shipments to Puerto Rico since 1949 have consisted of a larger proportion of mother-of-pearl and other high grade shells than in the immediate post-war period." Did you explain that that was in part attributable to the opening of a third company at that point? Did you make any qualifications?

PRESIDING OFFICER PARKINSON: The
593 record speaks for itself again, doesn't it? You are asking what is in the record.

MR. FELDMAN: I am asking why he did not refer to the fact that he has made a conclusion here. He tells the industrial committee that this would indicate shipments from Puerto Rico since 1949 have consisted, he says, of a larger proportion of mother-of-pearl and other high grade shells than the—in the immediate post-war

period. Now, if that was attributable to the fact that there was another unit operating there, that would be a whole lot different than the expansion of existing industries. Now, the impression is gathered that the Puerto Rican industry, as it existed before, has increased its consumption and importations while the whole United States declined, while not taking into account one of the largest in the United States opened a plant there.

PRESIDING OFFICER PARKINSON: I am just observing here—

MR. FELDMAN: He asked me.

PRESIDING OFFICER PARKINSON: Just a minute; just a minute. You just ask questions instead of making comments as you do broaching on argument, and I think that we will get along a lot faster.

MR. FELDMAN: I am asking questions.

PRESIDING OFFICER PARKINSON: Ask him again, please.

BY MR. FELDMAN:

Q My question is: Why did you make the conclusive statement that you made that there was an indication that shipments to Puerto Rico since 1949 have consisted of a larger proportion of mother-of-pearl and other high-grade shells in the immediate post-war period comparing it with a decline in the mainland without qualifying that this was due in whole or in part to the operation of a third company? A Mr. Feldman, I would like to have you look at the average value per pound of shipments of pearl to Puerto Rico. All this statement consists of is this: that the value per pound of shell shipments to Puerto Rico increased substantially in 1951 over the preceding years. On the basis of that I have made the statement that it is likely that shipments of shells to Puerto Rico consisted of a larger percentage of mother-of-pearl and other shells than before.

Q And you also comment, do you not, that during the same period there was a decline in the mainland? A I

made the comment that during the same period—

Q There was a decline on the mainland? A What are you referring to?

Q The sentence before the one I just read in the third paragraph on page 3. It reads as follows: "Since then, the value of shipments of shells to Puerto Rico has risen substantially, while the value of foreign imports of unmanufactured shells into the United States declined between 1947 and 1950, increasing again slightly in 1951."

A Mr. Feldman, I would like to point out that both Puerto Rican manufacturers and mainland manufacturers obtain their shells from the same sources in New York. I do not follow your question.

Q You do not understand my question? A No, 595 sir; I do not.

Q My question is: that the third paragraph on page 3 of your report, upon reading it, as it therein reads, would indicate—you state that there was a rise in shipments to Puerto Rico of mother-of-pearl and other shells during a period of decline, during a similar period in the mainland. Now, if this was attributable to the operation of a third company in Puerto Rico, why did you not so state? A Mr. Feldman, I am talking here—the value of shipments of shells to Puerto Rico has risen substantially while the value of foreign imports of unmanufactured shells into the United States declined between '47 and 1950. All I am stating here is this: that shipments during this period, that is, imports into the United States of unmanufactured shells declined, which is true. At the same time the value of shipments, that is, the value per pound of shipments from the United States to Puerto Rico increased. I do not see the connection you are trying to make.

Q I have no further questions along that line.

Now I turn to table 3 which purports to give a comparison of quantity and value of pearl or shell buttons produced on the mainland of the United States and ship-

ments of pearl buttons from Puerto Rico to the mainland, 1939-1950, wherein you give the figures relating to the mainland fresh-water shell buttons, mainland ocean pearl buttons, Puerto Rican pearl or shell buttons. Now, in the Puerto Rico figures, have you taken into account and indicated from the chart that there was an increase in the production of Puerto Rico at any period by virtue of the fact that one plant of approximately 40 to 50 percent capacity of all the previous production had entered into the picture? A Does it show on the chart? Is that your question?

Q Yes. A No.

Q Now, on table 4 on you give an analysis, "Production Costs of two Puerto Rican and two Mainland Manufacturers—". Could you tell us the name of the Puerto Rican firm "A" that you use in that connection? A Mr. Feldman, without trying to avoid your question—

Q Answer it without speeches. You don't have to start all your answers by mentioning my name; I am not that important here. A Disclosing this sort of information is up to Mr. Judge.

Q No, you are a witness.

PRESIDING OFFICER PARKINSON: Just tell him you are not at liberty if you are not, or just say you are not at liberty to divulge it.

MR. FELDMAN: Is that your answer?

THE WITNESS: That's right, sir. I am not at liberty to divulge it.

BY MR. FELDMAN:

Q By virtue of what ruling or regulation are you refusing to make the answer? A Mr. Examiner, since I am a witness, may I have the right to counsel?

PRESIDING OFFICER PARKINSON: Ask your question again.

BY MR. FELDMAN:

Q By what rule, regulation or other are you refusing

to answer my question of disclosing the name of
 597 the Puerto Rican Firm "A" who is symbolized by
 the title, Firm "A", on table 4 of your economic
 report? Do you know? A Mr. Examiner, do I have
 right to counsel?

PRESIDING OFFICER PARKINSON: Whom do you
 want to consult?

THE WITNESS: I wish to consult Mr. Judge, my
 superior.

PRESIDING OFFICER PARKINSON: Mr. Judge, be
 sworn will you please.

Whereupon

Thomas J. Judge

a witness appearing in behalf of the Administrator, after
 first being duly sworn testified as follows:

PRESIDING OFFICER PARKINSON: Now, you may
 direct your question to Mr. Judge, if you wish.

MR. FELDMAN: I asked him to give the name of
 the Puerto Rican Firm "A", who is listed as Firm "A"
 on table 4, which was used as a study for comparative
 purposes, comparing production costs. What is the name
 of that company?

WITNESS JUDGE: Some of these firms, Mr. Feld-
 man, information was obtained on a confidential basis, so
 we are not at liberty to disclose the names of those
 companies.

MR. FELDMAN: I ask, Mr. Hearing Officer, that you
 direct the witness to give me the answer.

PRESIDING OFFICER PARKINSON: No, I would
 not make any such ruling.

MR. FELDMAN: I want to point out, Mr. Hearing
 Officer, that in the record that was made before the
 598 industry advisory committee, the committee and Mr.
 Judge probed into the most intimate affairs of the
 companies that I represent, to wit, the Red Star Manufac-
 turing Company and Ocean Pearl Manufacturers of Puerto

Rico and the Manati Pearl Works of Manati, Puerto Rico. They not only wanted profit and loss statements; they wanted a breakdown of administrative expenses, and they asked for information regarding companies that weren't even connected with the hearing, affiliated companies, United States corporations. They were produced on demand. Mr. Judge demanded from us data, and he obtained it. It would be impossible for us properly to present a picture regarding production costs unless we knew the source of this data. Are we to remain in the dark about such a vital thing as with whom are we being compared? Apparently the industry advisory committee gave weight to this report in making its recommendation. There is no question that it did. There is no question, furthermore, that in making the economic report they intended that this information be used by the industry, by this committee.

PRESIDING OFFICER PARKINSON: They have declined to answer, and I have declined to instruct them to answer.

MR. FELDMAN: I think that is an important right of the appearances that I represent here; their right is being violated.

PRESIDING OFFICER PARKINSON: All right, you have your record.

MR. FELDMAN: And you have my exception on the record.

PRESIDING OFFICER PARKINSON: All
599 right, I have your exception; let's proceed.

MR. FELDMAN: Is that going to be your ruling on any other information I am going to ask for along those lines?

PRESIDING OFFICER PARKINSON: I will cross the bridges as I come to them. Now, the reason I say that, I have no power to force them to answer the questions. Mr. Judge states it is confidential information, and I have no power to direct him to do it on that basis.

MR. FELDMAN: Under the Administrative Procedure Act, this proceeding at least along these lines must be conducted—

PRESIDING OFFICER PARKINSON: All right, if we are not complying with the Administrative Procedure Act, the government is willing to proceed, and you have your record. I take it that is the reason you are here, to make a record. If you don't like what is happening—

MR. FELDMAN: I object to that, sir. I am here to present the side of an industry that has a vital interest in the outcome of this proceeding, its economic life, and I don't want any suggestion made for the record that I am here to make a record. And moreover, I would be most derelict in my duty if I didn't protect the rights of these people under the statutes—

PRESIDING OFFICER PARKINSON: You don't understand me. I merely attempted to state that you are here to get all the facts and all the consideration on the record for whatever purpose you want to use them, and that is what I meant when I said you have your record;

that's what I meant. Now, I'm sorry you misunderstood me because I certainly didn't have any other intentions in the remarks.

MR. FELDMAN: I have a perfect right to be here.

PRESIDING OFFICER PARKINSON: Why, certainly.

MR. FELDMAN: And so do the people that I represent. In a sense I am being denied the right of appearance by denying this information, and so are those people if we have to go through this torture of forcing the witness—it's a straight ordinary rule of administrative procedure; this is a vital question. If the industry advisory committee relied upon this data, we have the right to challenge it here. We have the right to come before you and say, Mr. Administrator, we do not consider the record to be accurate, but we don't know who the Puerto Rican firm is; we cannot argue about it.

PRESIDING OFFICER PARKINSON: Let me give you my position. If you are asking for information which you are entitled to, and the government has refused to give it to you, then you have your recourse elsewhere.

MR. FELDMAN: As hearing officer I am sure you are here to see that I get what I am entitled to get, and it is your duty as a hearing officer to force and direct witnesses to answer unless they wish to be contumacious and that is another question.

PRESIDING OFFICER PARKINSON: The reason I have not directed them to answer is that the testimony of the witness is that it is confidential information.

MR. FELDMAN: It can't be under these circumstances. It is made into a public record and used
601 to influence an industry advisory committee in making a recommendation which now affects us materially. At this point it is no longer mere conversation and personal information. This is a public record and property. We are entitled to explore into this question.

PRESIDING OFFICER PARKINSON: Let me ask you some questions, Mr. Judge. You said it was confidential information; will you expand on that a little further?

WITNESS JUDGE: Yes. Mr. Feldman, we circulated a questionnaire—

PRESIDING OFFICER PARKINSON: Don't keep referring to Mr. Feldman; he has objected to that; that is not necessary.

WITNESS JUDGE: The Division circulated a questionnaire to some seven or eight manufacturers of ocean pearl buttons in the States. In doing that, we told them the information would not be used on an individual company basis and that the names of the individual companies would not be disclosed. We are therefore not at liberty to disclose the names of the companies.

MR. FELDMAN: But you did use it on an individual company basis because you referred to Puerto Rican

Firm "A". That's not a combined group of companies; that is one company used in that table.

WITNESS JUDGE: I amended that statement right afterwards, Mr. Feldman. I said that we did not—we showed that we would not disclose the names of the individual companies.

MR. FELDMAN: And you intended to put the data obtained from them in the economic report?

602 PRESIDING OFFICER PARKINSON: Just a minute. In order to get the record straight as far as my ruling is concerned, you still say that in face of what he has just said that I have the right or the duty, the responsibility in this hearing to direct him to name that company?

MR. FELDMAN: No question about it.

PRESIDING OFFICER PARKINSON: And you move that I so direct?

MR. FELDMAN: I so do.

PRESIDING OFFICER PARKINSON: Your motion is denied.

MR. FELDMAN: I take exception, and I ask the same question that I put to this witness (indicating) on the stand.

PRESIDING OFFICER PARKINSON: Same ruling.

MR. FELDMAN: Is that the same ruling for Mainland Firm "B" as it was for Mainland Firm "A" that is listed under the same section, listed as being a manufacturer of ocean pearls; is that going to be your answer too? Will you give me the names of those companies?

WITNESS REIF: The answer is the same as it was previously.

MR. FELDMAN: I direct, Mr. Hearing Officer, that the witness be directed by you to give me the answer by furnishing me with the names of the firms, Mainland Firm "A" and Mainland Firm "B", mentioned on table 4 of the economic report.

PRESIDING OFFICER PARKINSON: For reasons heretofore stated, the motion is denied.

MR. FELDMAN: Exception.

BY MR. FELDMAN:

Q Will you tell me from what source you obtained the information for Mainland Firm "A" and
603 Mainland Firm "B"? Did you pick them out at random or were they supplied to you by someone? A (Witness Reif) As I recall, we got these names from two sources. Number one, I went to the library and obtained names of manufacturers of ocean pearl buttons from the Thomas Directory. The second source was an inquiry to Mr. Fickett asking him for the names of six or seven ocean pearl manufacturers.

Q And did Mr. Fickett furnish you with the six or seven names? A He did.

Q Were these two selected from the six or seven names or from the directory? A That I do not recall, sir. There was some duplication there. I do not recall whether they were on one or the other.

Q Well, you know who the two names are; you know who they are, don't you? A Yes, I do.

Q You know there was six or seven names furnished you by Mr. Fickett, do you not? A That information is probably in the files; yes, sir.

Q Therefore you could tell us whether the two came from that or some other independent source? A As I said, I went to the Thomas Directory, and it is likely that the names of the firms were on both lists.

Q I didn't ask you that question. I asked you
604 specifically whether the two names were on the list of six or seven names furnished you by Mr. Fickett. A I will have to check the files before I can answer that question. I do not recall.

Q Do you know what criteria you established for the selection of two companies out of the seven or out of the larger list that you might have selected from the use of

the directory? What criteria did you employ? A As I recall, for your information, we sent questionnaires to more than two firms. We sent questionnaires, I believe, to six firms or perhaps seven. That would be in our files too, and we did not get a full answer.

Q How many did you get? A I'll have to check that.

Q Will you please.

(Pause)

A I have two of them here. As I recall a third one was submitted, but it was received too late to be made part of the second economic report. In addition to that we received some returns stating that the manufacturers no longer were manufacturing ocean pearl buttons and were therefore unable to give us that information.

Q You say you only got two answers? A I believe we received two or three completed questionnaires out of six or seven sent.

605 Q So that the two mainland firms that are referred to as "A" and "B" are from the two of the three of the returns that you got? A That's right.

Q How many questionnaires did you send out? A I don't recall exactly; it was between six and eight.

Q In the preparation of this questionnaire, did you get any assistance from anyone? A Yes.

Q From whom? A We prepared the questionnaire first of all on the basis of what knowledge we wished to obtain. Second, we submitted—a statement was submitted by Puerto Rican firms at the previous industry hearing, and the format on which the information was presented was used as a guide in preparing this questionnaire. After we had it completed, we sent it to Mr. Fickett and asked his expert opinion on the questionnaire. He suggested a few changes which were made.

Q Mr. Fickett was representing the fresh water pearl manufacturers at the time—

MR. FELDMAN: Mr. Chairman, if this is the way

we are going to conduct the hearing, I think I have a right to object.

PRESIDING OFFICER PARKINSON: Just a minute; you didn't need to make a remark; I was ready. Gentlemen, you must not look at each other and prompt each other on your answers. I detect no particular motive in doing so, but if you don't know, the answer is, I don't know.

MR. JUDGE: Mr. Examiner, I thought we were
606 trying to get factual information for the record.

If you want exact answers, I don't see why both of us can't refresh our recollection to answer the specific question.

PRESIDING OFFICER PARKINSON: Perhaps I am not making a correct ruling. I will hear you on it. What were you going to say? Ordinarily when a person is under cross examination they don't consult other witnesses. I do realize in rule making this is not an adversary proceeding—what were you going to say?

MR. AMBRISTER: I was just going to suggest something that you are very familiar with and that is that the rules of evidence are not controlling here.

PRESIDING OFFICER PARKINSON: The person who is conducting cross examination objects to it, and as a matter of orderly procedure I will sustain the objection. Let's not confer with each other. If you don't know, say so; and if you want some assistance, ask for it and we will see how we get along. Mr. Judge, I think we will get along better that way.

MR. FELDMAN: Will you read the last question.

(Reporter read preceding question as above recorded.)

WITNESS REIF: My answer is—

PRESIDING OFFICER PARKINSON: The record doesn't show that you did hesitate, but if you wish to make an explanation that will be all right.

WITNESS REIF: Yes, because I am mistaken. Mr. Fickett represents two associations, namely, the fresh

water pearl and the ocean pearl people. Therefore I hesitated, but I believe—as I recall—that at that time he was acting in the capacity of the fresh water shell association.

607 BY MR. FELDMAN:

Q Did he approve this questionnaire? Did he approve of the form of the questionnaire? A He made some changes on it as I recall.

Q Did you consult anybody among the ocean pearl manufacturers of Puerto Rico at that time? A No, sir.

Q Why not? A Primarily because the questionnaire was based along the same lines as the testimony presented at a previous hearing. Do you have the November, 1949 report?

Q Yes. My question is: Why didn't you consult the ocean pearl manufacturers of Puerto Rico?

PRESIDING OFFICER PARKINSON: I think he has answered it.

MR. FELDMAN: What is his answer; I didn't get it.

THE WITNESS: Due to the fact the questionnaire was written up along very similar lines to the way they presented their cost data in 1949.

BY MR. FELDMAN:

Q But you said Mr. Fickett made changes in it. A They were very minor changes. I do not recall what they were.

Q But you didn't consult with them? A With whom?

Q With the ocean pearl manufacturers of Puerto Rico? A No.

608 Q Did you know that Mr. Fickett would appear at the industry advisory committee hearing as a proponent in favor of a 75-cent rate and would speak in behalf of the fresh water pearl button manufacturers? A I don't know whether at the time Mr. Fickett had filed his intention to appear at the hearing in Puerto Rico.

Q Why did you contact him then? A I can't answer that question, Mr. Feldman.

Q Do you know approximately how many fresh water button manufacturers or pearl manufacturers there are in the United States? A In 1951?

Q At the time you made this report. A According to footnote "A" in table 10, which is based on a publication of the United States Department of the Interior, footnote "A" reads in the economic report dated June, 1952, page 17, "Mussel shell products were manufactured in 11 plants in Iowa, 2 in New York, and 1 plant each in Pennsylvania and Missouri."

Q A total of how many? A Fifteen plants.

Q You sent questionnaires to all of those? A No, sir; questionnaires were only sent—

Q To ocean pearl? A To ocean pearl.

Q You didn't send any questionnaires to fresh
609 water? A No, sir.

Q Why didn't you do that; you are making other comparisons, production costs, production and so on; why didn't you send similar questionnaires to the fresh water people?

MR. GLASER: May I submit, Mr. Parkinson, it seems to me the reasons why the representatives of the Administrator did or did not send questionnaires to certain firms is really not pertinent to the issues of this proceeding. What is pertinent, the issue is, whether or not certain recommended rates for the Button, Buckle and Jewelry Industry are appropriate in the light of the statutory standards set forth in Section 8 of the Fair Labor Standards Act, as amended; and it seems to me that this is unnecessarily cluttering up the record and fogging the issues to pursue this line of questioning. If Mr. Feldman or the persons he represents feel that the information in the economic report is not correct, they should submit for the record, for the help of the Administrator in deciding the appropriateness of the rates recommended,

what they consider to be correct information, they have full opportunity to refute or rebut any material in this economic report or any other material in the record.

PRESIDING OFFICER PARKINSON: I take it that your objection is it is not proper cross examination? It has occurred to me once or twice, as the questions have gone on—

MR. FELDMAN: May I be heard on this?

PRESIDING OFFICER PARKINSON: I just want to ask a question if you will listen and let me complete my sentence. I am not ruling. First, I will start
610 off by telling you I am not ruling. I just want some information. Are you at liberty at this point in the hearing to tell me what evidence you have to submit?

MR. FELDMAN: Oh, yes.

PRESIDING OFFICER PARKINSON: I would just like to have you make a statement for my guidance.

MR. FELDMAN: I have information showing, answering the question of competition, on the subject of competition between fresh water and ocean pearl on the effect of the proposed minimum on the producers of ocean pearl on the island, on the question of the propriety and correctness and accurateness of a number of statements which were made before the industry advisory committee relative to economic data, and in pursuing this line of questioning I am doing what I think is most vital, indicating what the advisory committee had insofar as this economic report is concerned was a very distorted picture of the economic situation, one which was calculated not to reflect truly the basic economic data concerning employment, production costs, competition or any other factors which are vital to their determination. It would be most novel if my brother's argument is to be sustained there, that the Administrator would not be interested in knowing whether or not the hearing before the industry advisory committee was a proper one.

Now, I suggest this. I don't think I ought to make any bones about it. I suggest for the record that this economic report was so biased as to constitute a brief almost in behalf of certain interests who were seeking to eliminate Puerto Rican production, competition so-called by the elimination of ocean pearl industry of Puerto Rico. I suggest further, and I think anybody who has heard the answers to my questions thus far will see, that a private individual not connected with the industry sitting—taking this document and handing it to him and reading it, would get a picture, unless he is very astute and statistically minded and to take the trouble of probing—and it is not likely that a person would give it that kind of attention or may not even have the skill to do it—would reach conclusions and statements all calculated to present a picture, a rosy picture—

PRESIDING OFFICER PARKINSON: You have answered my question, Mr. Feldman. He may answer; proceed.

BY MR. FELDMAN:

Q My question was: Why didn't you send out a similar questionnaire to the fresh water button manufacturers? A I don't know why the same questionnaire was not sent out to fresh water shell manufacturers.

Q Wasn't it claimed that there was unfair competition between the fresh water button manufacturers and ocean pearl of Puerto Rico? A Can you be more specific?

Q Wasn't that one of the issues that you thought would come up at the hearing in anticipation of which you attempted to give some information of an economic sort to the industry advisory committee for its guidance? A In preparing these economic reports, we go through records of previous industry committees. We look at the record. We find out what the industry committee members considered most important. That partially influences what to include in the economic re-

ports. We simply try to help out the special industry committee.

Q Did you know when you were preparing your report that an issue would be raised during the course of the proceedings which would involve a question of competition between fresh water, mainland, and ocean pearl of Puerto Rico? A Are you asking me what my opinion was at the time?

Q Yes. You are an expert. A I don't believe my opinions should enter into this record.

Q You had to use some opinions when you developed the report, throughout the report. You deal with these various subjects of competition. A I present facts.

Q Facts and conclusions based on such facts. A What is the specific question?

Q The question is: Did you consider that it would be an issue during the proceedings for which you prepared the report of competition between fresh water button manufacturers of the mainland and the ocean pearl manufacturers of Puerto Rico? A The issue was raised at the previous committee hearings; therefore, this information was included.

Q I asked you therefore why did you not send a similar questionnaire to manufacturers of fresh water?
613 A I answered that question before saying I don't know.

Q Now, on page 9 of your report—

MR. GLASER: Before you go into that, if you don't mind my interrupting, Mr. Feldman, are you contending that the firms you represent were not given an adequate opportunity to present their views on this question of competition in the hearings in Puerto Rico?

MR. FELDMAN: It is my contention—I repeated it before—that this economic report, which had great influence upon the industry advisory committee, was prepared in a way as not to truly reflect economic conditions pertaining to the issue presented before the industry com-

mittee insofar as ocean pearl button manufacturers of Puerto Rico were concerned.

PRESIDING OFFICER PARKINSON: You have a matter which you want to establish there which certainly the Administrator is interested in, if what you say is correct; but you've got a case in chief; you've got something to establish. You are trying to do it—

MR. FELDMAN: I'm doing it my way, sir, if I may.

PRESIDING OFFICER PARKINSON: I don't want to limit the scope of cross examination, but it's going pretty slowly at the present time.

MR. FELDMAN: It would go much quicker if the witness would just answer. I am the fastest questioner in the world.

PRESIDING OFFICER PARKINSON: All right, proceed.

MR. FELDMAN: Nobody ever said that I was slow with questions. Turn to page 9.

614 BY MR. FELDMAN:

Q On page 9 I call your attention to the recapitulation, as it were, if you want to call it that, or comparative hourly wage rates, where you give occupations: cutter, sorter, grinder. Then you say, average hourly rate in three Puerto Rican firms. Will you give us the names of those three Puerto Rican firms? They are the three Puerto Rican firms on the island, right? We have no problem there, have we? Can you tell us how you arrived at that average?

PRESIDING OFFICER PARKINSON: There is about four questions there. Ask him one at a time.

MR. FELDMAN: He nodded those three Puerto Rican firms are no secret. We know who they are. He is not going to claim any immunity there, right?

THE WITNESS: No, sir.

BY MR. FELDMAN:

Q Now, will you tell us how you arrived at those average hourly rates for the three Puerto Rican firms?

A As you recall, we made a wage survey at the time we prepared the economic report. The average hourly rate was taken from that wage survey.

Q You took all the wages of cutters in the three plants, and you found what the average was? A That's right, sir.

Q You took all the wages of sorters and took
615 all the wages of grinders. Now, did you know what they were cutting? A No, sir.

Q You didn't know whether they were cutting 18-line, the larger line blanks; you didn't know that? A No, sir.

Q You did not know whether they were cutting any special work or anything? You didn't know that either? A No, sir.

Q You just happened to go in that week. Did you make any inquiry as to the types that were being cut at the time? A I believe the economic report states that the firms in Puerto Rico could use mainly 18, 20 and 22 line buttons.

Q Did you make any study of the productivity of the labor? A Will you clarify that productivity in terms of what?

Q Output, per man, per machine. A No, sir.

Q Did you personally visit these plants at any time? A No, sir.

Q Did you ever send them a questionnaire regarding the type of goods they were producing? A No, sir, but our staff in Puerto Rico visited these firms and obtained this information.

Q Off the books; off the payroll records? A I don't know who they saw. I don't know how they obtained the information.

616 Q They didn't give any breakdown according to the article which was being made? A No, sir.

Q Now, you have average hourly rates in two mainland firms. Are these the two firms which you would not

disclose that appear under the heading "Mainland Firm A" and "Mainland Firm B" on table 4? A That's right, sir.

Q Do you know whether they are paid by the hour, the piece? A These are average hourly rates of employees on piecerates.

Q Do you know what their productivity was? Did you make a study of productivity of these two mainland firms making ocean pearl buttons? A No, sir.

Q Did you make a study of what they were working on at the time? Were they working on large buttons, novelty buttons or staple buttons, 18-line; do you know that? A No, sir, except that we inquired of Mr. Fickett—we requested him to submit us names of firms which do produce 18, 20 and 22-line buttons.

Q Do you know whether these rates were applicable to such lines? A No, sir; I do not.

Q Do you know whether this includes overtime? A No, sir; I do not.

Q Do you know to what extent these people produced first, second or third or fourth quality buttons and what the losses were in the production at those plants compared to Puerto Rico? Did you ever make any
617 investigation into that? A One firm gave us a breakdown on the quality of their production. That information is included in this report.

Q Is that a Puerto Rican firm or a mainland firm? Are you referring to the information that is at the bottom of page 9? A It reads, "An approximate breakdown of quality of production for a mainland firm is presented below."

Q Is that one of the two firms that reported to you that you used on the average hourly rate calculation? A That's right, sir.

Q And is it one of the two mainland firms who appear on table 4? A That's right.

Q Can you tell us which one, "A" or "B"? A That is mainland firm "A".

Q You obtained a financial statement from the Red Star Manufacturing Company of Puerto Rico; did you not, which you included in your report on page 10; is that correct? A That is correct, sir.

Q How did you obtain it? Did you ask for it? A Yes, sir.

Q You got it? A Yes, sir.

Q And you also obtained a profit and loss statement, did you not, table 5, page 11, from the Red Star Manufacturing Company? A Yes.

618 Q For the year 1951? You also obtained from the Red Star Button Company, Incorporated of New York, a profit and loss statement for the year January 1, 1951, table 6? A Yes.

Q And you got it on table 7? You were given the Manati Pearl Works, Incorporated, profit and loss statement for the year 1951, table 7? You published that, did you not? A Yes.

Q You also obtained from the Puerto Rican American Company a profit and loss statement? A Yes.

Q You published it? A Yes.

Q Did you ask for any statements from any of the mainland firms, profit and loss or balance sheets? A No, sir.

Q Did you ask for any profit and loss or balance sheets from any of the companies engaged in fresh water manufacturing? A No, sir.

Q Did you make any effort to get them? A No, sir.

Q Did you consider it was important from the standpoint of studying the effect of competition, unfair competition, alleged competition?

619 MR. GLASER: I object to that question.

PRESIDING OFFICER PARKINSON: You may answer.

THE WITNESS: I can't answer that question. I don't know.

BY MR. FELDMAN:

Q You say you did not consider it important? A My answer to your question is, I don't know.

Q As an economist who prepared this report, am I clear in understanding you to say that you do not know whether it would be important to compare profit and loss or capital structure of company or companies alleged to be in unfair competition with each other, based upon wage rates? A It is up to the industry committee to decide what is important and what is unimportant in the final analysis. We did not obtain that information.

Q Then explain to me and to the Administrator why you requested such data from Red Star, Manati and Puerto Rican-American, the three manufacturers of ocean pearl on the island? A Such data has been received by the Department at all previous committees. We knew ahead of time, while we were almost certain that the industry committee would request the companies to submit their financial statements, we obtained them beforehand for the industry committee.

Q You don't think they would want it from the other companies that you are referring to? A I don't
620 know, sir, what the industry committee would want.

Q You said you knew they would want this. A Yes, sir, because it was submitted at previous hearings, and financial statements are submitted by the various committees, I believe, at almost every hearing.

Q You were present at the industry advisory committee hearing, weren't you? A No, sir; I was not.

Q You read the record, did you? A Yes, I have.

Q You remember Mr. Sneith and Mr. Fickett, the first people being there, if you read the record? Do you recall their close examination of the witnesses of Manati and Red Star regarding their profits, their costs, their administrative salaries? They went into great detail, did

they not? A I do not recall that specifically.

Q You do not recall a long line of testimony in which they probed that? A Will you tell me what page is that?

Q The pages were half the volume if you have read it.

MR. GLASER: I don't see any purpose to this type of questioning.

PRESIDING OFFICER PARKINSON: You may answer. He has a point that he wants to pursue.

MR. GLASER: May I suggest that the proper
621 way to pursue the points which I understand Mr.

Feldman is trying to make, and certainly a way that would be much more helpful to the Administrator and to a Court in the event of a Court review in such proceedings, would be to have the information which Mr. Feldman and the firms he represents in the record to correct or qualify any information which they consider—

PRESIDING OFFICER PARKINSON: Your objection is that it is improper cross examination?

MR. GLASER: Right.

PRESIDING OFFICER PARKINSON: Objection overruled. He may answer.

MR. AMBRISTER: And the further rule that it is highly argumentative.

MR. GLASER: I do not believe the motives of the Administrator as to why certain information was or was not obtained is relevant unless Mr. Feldman is trying to, is charging bias or prejudice on the part of any persons here, if that is his charge. If that is his charge then let him make his charge and submit the evidence to support it.

PRESIDING OFFICER PARKINSON: Now I don't understand your position. Just a minute, one at a time, please. What are you seeking to say?

MR. GLASER: The point I am making—

PRESIDING OFFICER PARKINSON: Just make a motion.

MR. GLASER: I would like to explain it if I may.

PRESIDING OFFICER PARKINSON: Make your motion first.

MR. GLASER: My motion is—I am moving that this line of questioning be stopped at this point. I believe it is improper. I believe the reasons given by Mr. Feldman for pursuing this line of questioning, if I understand him, is his attempt to show the information submitted to the industry committee by the Administrator was biased.

PRESIDING OFFICER PARKINSON: Again it comes down to whether or not it is proper cross examination. He may answer.

BY MR. FELDMAN:

Q I asked you whether or not during the examination, to your knowledge, representatives of the fresh water people were permitted and did go into lengthy questioning of the profits and losses of all the Puerto Rican companies? A If that is in the record, then it is a fact; yes, sir.

Q You went into a study of the growth and development of plastic buttons in your study; did you not? A If it's included in this report, I did.

Q Well, did you?

PRESIDING OFFICER PARKINSON: Answer the question.

BY MR. FELDMAN:

Q Did you make such an investigation? A There is a paragraph included on plastic buttons; yes, sir.

Q Page what? A Page 24, top of page 24. Let me correct that. That pertains to the shipment of plastic buttons produced by the Caguas Button Company.

Q You are talking about mainland production of plastic buttons. You had some census figures; did you not? A Appendix Table A—

Q That's right. There is a plastic manufacturer of buttons in Puerto Rico; you know that, don't

you? A There is a manufacturer to my knowledge who pearlizes plastic buttons; yes, sir.

Q Does he sell plastic buttons? A To my knowledge, sir, he does not produce plastic shirt buttons.

Q What does he do? A I have reference now to the Caguas Button Company.

Q So have I. You say he does not manufacture plastic buttons but he only pearlizes them? A That is my understanding; yes, sir.

Q Did you know that at the time you made your report that an industrial tax exemption was granted to this company? You made reference, you made a study of that in your report, industrial tax exemptions granted by the Government of Puerto Rico? A To that company, sir?

Q To the ocean pearl, and you made a study of it. You made a comment pointing to it. I thought you would be familiar with it. Page 40 I refer you to—42; page 42, top of the page, "Tax Exemption". The second part says, "With the exception of the ocean pearl button firms and those using homeworkers, establishments in the Button, Buckle, and Jewelry Industry appear eligible for this tax exemption, and have applied for and received this privilege." No such exemption was given to any of the
624 three ocean pearl button manufacturers; were there? A The record speaks for itself.

Q That sentence had to be read four times by me before I understood it.

PRESIDING OFFICER PARKINSON: What is the question?

BY MR. FELDMAN:

Q To your knowledge no exemption has been granted to any of the ocean pearl button manufacturers in Puerto Rico? A That is what the statement states?

Q Yes. Now, did you know at that time that Caguas had gotten an exemption? A The statement reads, "With the exception of the ocean pearl button firms and

those using homeworkers, establishments in the Button, Buckle, and Jewelry Industry appear eligible for this tax exemption, and have applied for and received this privilege." That was the extent of my knowledge at the time.

Q You did not know that Caguas had gotten an exemption?

(No response.)

Q All right.

MR. FELDMAN: That's all.

PRESIDING OFFICER PARKINSON: Mr. Judge, you indicated a few minutes ago that you might have something to state here.

MR. JUDGE: I believe not, Mr. Examiner. Possibly some of the questions Mr. Reif didn't answer I could have answered.

625 MR. FELDMAN: I would like to have him give me the names of the mainland firms "A" and "B".

PRESIDING OFFICER PARKINSON: Is there anything else?

MR. JUDGE: That's all.

MR. AMBRISTER: The Government rests.

MR. FELDMAN: Oh, yes. There is one question; excuse me. Let me have exhibits 1 through—

PRESIDING OFFICER PARKINSON: Is there anything to come in here now that was going to take just a few minutes before we hear Mr. Feldman's witnesses?

(No response.)

PRESIDING OFFICER PARKINSON: All right, Mr. Feldman, we will take a five-minute recess.

(Short recess)

PRESIDING OFFICER PARKINSON: Mr. Feldman.

MR. FELDMAN: At the industry advisory committee hearing, there were two witnesses present representing the Manati Pearl Works and Red Star Manufacturers respectively. These men were in charge of the production plant and the operations on and at Puerto Rico, on the island. They were asked by several members of the

committee, directed to show, to give some idea of what a series of suggested increases in the minimum might result in their wage cost picture. It was very difficult to present accurately, in a session of that sort, what the picture would show. For certain, at least as to Ma-

626 nati, which had shown a loss in 1951 and who had a serious crisis in regard to its operations because it was not able to complete production of the complete unit as it originally anticipated—by that I mean the manufacture of blanks and finish them into buttons completely as a whole unit—but was obliged by force of circumstances, wage costs and other problems to ship unfinished blanks back to the mainland for finishing, that it was certain in the case of Manati that if the increase was one penny over the old minimum, they had to on the basis of present operations increase the loss that was shown by the company.

In the case of Red Star, where it showed that the net profit of the corporation was roughly 8 percent of the wage, the total wage bill for the year '51, that an increase of 8, 10, 15 or 17 percent would not only wipe out the profit but establish a large loss. But I said they were not able to give the specific answers at that time. Moreover, it was an important bookkeeping investigation that had to be made before you could give the answer. By that I mean, in all previous experiences of the company, whenever the minimums were increased the increases in labor costs were not limited to the difference between those earning less than the minimum being brought up to the new minimum—it was clear that what happened was a series of escalator rises took place up the line into the higher crafts; in other words, there were relations and ratios of earnings from the bottom to the top as it were and at the bottom created a level which required you to make a series of adjustments in the upper rates so that the cost of a wage increase or minimum

wage increase was considerably more than the mere
 627 difference between the old and the new existing
 piecerate at any given period.

We have had two studies made which we are going to present to you first. One is the projection study made for Red Star showing what a 54-cent rate would do to its wage structure, what similar increases had done in the past when they had to maintain these ratios between minimum and upper levels, and giving you the picture of the total cost for this thing. And it will show the small profit the company earned on an investment, capital investment of over \$400,000 would be wiped out and there would be substantial loss.

In the case of Manati, under present operations it goes without saying, anybody familiar with the record will know, that it will increase their present loss of three or \$4,000 by twenty-five or thirty thousand.

I do not represent the third company, the Puerto Rican-American Company, and they are not represented here. At the hearings the record will show that a representative of their company said that they subscribed to the position and views taken by the two other companies who had witnesses. I want the record, however, to state—for the record—that the Puerto Rican company virtually ceased its operations at the present moment and is not operating in Puerto Rico at this time, that it is contemplating transferring its operations from Puerto Rico and is in the midst of doing so, and has opened up other plants elsewhere.

In the case of Manati, the company is squarely up against a situation, and it says this advisedly, for the
 record, for the public to know—not just as a speech,
 628 and not just as a threat because it is not—we
 have valiantly struggled with the idea of making a go of the Puerto Rican operation. We will show testimony that I will present to you that they face a blank wall, particularly with this last increase in the minimum.

In the case of Red Star, it is one which shows a small profit of a company engaged in business for upwards of 20 years or more, where comparable companies on the mainland have gotten rich and prosperous, and they have never had anything like a successful operation which you would find on the mainland, is now faced with total extinction of its small profit that it made last year. This is the result, as we see it, projecting it in the terms of what the actual costs are, of the proposed minimum if approved by the Administrator for the Pearl Button Manufacturing, Ocean Pearl of Puerto Rico.

The first man I will call is Mr. Oetting of the Red Star Manufacturing Company and ask him to take the stand.
Whereupon

Mr. Arthur F. Oetting

a witness appearing on behalf of the Red Star Manufacturing Company, after first being duly sworn, testified as follows:

Direct Examination

BY MR. FELDMAN:

Q Mr. Oetting, what is your full name? A Arthur F. Oetting.

629 Q What is your position with the Red Star Manufacturing Company? A Secretary of the Red Star Manufacturing Company.

Q Are you in charge of the plant in Puerto Rico? A I am in partial charge.

Q Where is it located? A In Santurce—San Juan, Puerto Rico.

Q What do you manufacture there? A Ocean pearl buttons.

Q How long have you been there? A The company has been there since 1923.

Q What was the largest number of employees you ever employed in your history on the island, and when was

that? A More than 600 in 1936-'37 period; around that time, more or less.

Q In the economic report on page 59 for the years 1937-1938, it shows the number of employees at 626, and subsequent to that there is a decline and that figure has never—now, during this period, 626, was the company working full time or part time, to your knowledge? A It's so far back it is hard to recall.

Q First, can you tell us why there was a decline, a substantial decline in 1937-'38 in employment by Red Star? A Mr. Feldman, that is already in the record.

Q I just want a very brief statement about that. A I was asked that very question at the hearing in 630 Puerto Rico, and I replied to a similar question which is in the record. Prior to 1938, our company was operating—we were not operating, I should say, under the Fair Labor Standards Act which was not in existence at that time. We employed a lot of hand labor using hand-operated machinery. The advent of the Fair Labor Standards Act made it necessary for us to—in fact we closed down for a month or two completely, and then after that we went into the installation of automatic machinery in order to eliminate certain hand labor operations to get our costs down.

Q And from that time on you never reached that figure again? A We have never approached it.

Q Now, have you been working a full work week in the past two years, 40 hours? A No, we have not.

Q What have you been averaging, the number of hours a week? A Between 29 and 32, 33 hours a week, averaging.

Q If you had to work a full work-week of 40 hours, would it be necessary under present conditions to reduce your present staff? A Considerably.

Q So that the figure you have been currently employing in the last two years represents persons working con-

siderably less than a full work week? A That is correct.

Q Is there any reason why, particularly why you have divided the work that you have or is there a labor
631 union requirement, good practice? A No, it isn't a labor union requirement, but it is considered good labor relations. We are trying to take care of the people we are working with, that are working with us, and trying to spread the work among them.

Q To what do you attribute this failure to work a full work-week in the last two years? A The buttons we would have to make in order to employ the people full time—

Q If you had more business you could work full time and overtime if necessary? A If we had more business we would have a profitable figure.

Q That is the reason why you haven't worked a full work-week? A That is correct.

Q When is the last time, do you recall, when you worked longer hours than the average that is now prevailing? A The last time, I believe, was some time during, shortly after the development of the Korean situation in 1950.

Q There was a rush of business? A There was a rush of business.

Q And since that time you have never had occasion to go back? A We have just dropped off, and we have never gone back to it.

Q Now, the last minimum went into effect—do you recall the date, the 46-cent rate, the present minimum?
632 A Sometime in August, 1949. I believe.

Q After that minimum went into effect, did you have to make adjustments in your wages? A Yes. We have had two collective bargaining agreement discussions since then, and in each instance our piecework rates have been scaled upward.

Q Will you describe, generally speaking, what was

your experience in dealing—what were the problems, rather, that were created by the introduction of the new federal minimum of 46 cents; I mean by that, in terms of your piecerates, the compensation above the minimum?

A First of all, naturally we were obliged to increase to the minimum those hourly workers, to the new minimum those hourly workers who were not covered.

Q Approximately how many persons was that during that time, if you recall, just roughly? A I don't recall.

Q That was a simple procedure. You had to raise those that were getting less than forty-six to forty-six?

A That is correct.

Q Now, what happened to those that were earning above forty-six or forty-six, in that area, above the old minimum, rather? A Our experience in that case and in previous increases in the minimum were analogous. We found that under the 37-and-1/2-cent minimum that a man who could by piecework rates earn 45, 46 cents an

hour would strive, because of the incentive pay, to
633 earn that much. But when the minimum was increased to let's say 46 cents, a big part of the incentive was eliminated so that a pieceworker who could earn 46 cents an hour, many of them failed to cover the 46 cents an hour and dropped below. Furthermore, we had other categories or classifications of employees who prior to the increase to 46 cents were earning let us say 47, 48 cents, personnel of a supervisory character. We were obliged to maintain that same level of differential between an operational worker and a supervisory worker, and we were obliged to raise the level of their pay as well in proportion.

Q In other words, you had a series of levels to raise above the minimum? A Upward revision of rates.

Q Now, this was your experience on each occasion there was a change in the federal minimum, including the last one of 46 cents? A That is correct.

Q Now, have you made a study of the effect that the proposed recommended minimum of 54 cents would have upon your operation in Puerto Rico, assuming it went into effect on a specific date you may pick at random, and tell us on the basis of your knowledge and understanding of the operations and piecerates and everything else and your prior experience. What would happen, in your opinion, in terms of your wage structure? A I have prepared a statement as a result of an analysis I have made of that nature which, with your permission, I would be glad to read into the record.

634 Q Would you do that.

MR. GLASER: Do you have copies of that statement, Mr. Oetting?

MR. FELDMAN: I think we will mark it for identification as Red Star Manufacturing Exhibit No. 1.

PRESIDING OFFICER PARKINSON: Do you want it read into the record or offer it as an exhibit? Proceed in your own way.

MR. FELDMAN: It is not too lengthy. It appears to be formidable—

PRESIDING OFFICER PARKINSON: I am skeptical about reading something that is going in anyway, because there it is.

MR. FELDMAN: Give us the highlights of it.

PRESIDING OFFICER PARKINSON: I instruct the reporter at this point in the record to copy it in verbatim.

ANALYSIS OF EFFECT OF INCREASE IN MINIMUM WAGE RATE TO 46 CENTS AN HOUR ON ANNUAL WAGE BILL.

Payroll Analysis for the weeks ended August 8, 1950 and September 12, 1950 show that the DIRECT effect of increasing the minimum wage rate from 37½¢ to 46¢ an hour was to increase the weekly payroll by approximately \$488.56 or about 10%.

This, however, account for only the DIRECT increases resulting from raising up to 46¢ minimum all those work-

ers who were earning less than 46¢ an hour at the former 37½¢ minimum rate. It does NOT account for the following additional increases which also resulted from the raising of the minimum wage rate to 46¢ an hour:

The increases in piece work rates and in hourly rates which were necessary to maintain the proper wage level differentials for the various classifications above the minimum.

635 The Payroll Analysis for the week ended June 10, 1952 shows these additional increases had had the following results;

Cutting:—average hourly earnings increased by 8.5¢ per hour—from 47.1¢ to 55.6¢ per hour.

Belt Backings:—average hourly earnings increased by 6.4¢ per hour—from 57.1¢ to 63.5¢ per hour.

Convex Backing:—average hourly earnings increased by 4.8¢ per hour—from 54.8¢ to 59.6¢ per hour.

Supervisory & Miscellaneous:—average earnings increased by 9.0¢ per hour—from 72.3¢ to 81.3¢ per hour.

In proof of our contention, applying these increases to the payroll for the week ended September 12, 1950 shows the following results:

<i>Cutting</i> —4545½ man hours at 8.5¢ per hour	386.37
<i>Belt Backing</i> —183 man hours at 6.4¢ per hour	11.71
<i>Convex Backing</i> —536 man hours at 4.6¢ per hour	25.73
<i>Supervisory and Miscellaneous</i> —1.295½ man hours at 9.0¢ per hour	116.60
<i>Total Indirect Increases</i>	540.41
<i>Total Payroll at 37½¢ Minimum</i>	5065.47
<i>Percent Indirect Increases</i>	10.7%

Now, then, the payroll analyses for the following weeks show the following DIRECT increases in our wage bill which would result if the minimum wage rate were increased from 46¢ to 54¢ per hour;

636

Week Ended	Total Man Hours	Total Payroll	Total Direct Increase	Percent Direct Increase
2-5-52	6408	3664.66	271.62	7.4%
4-8-52	7661- $\frac{3}{4}$	4391.77	295.91	6.7
5-27-52	6913- $\frac{3}{4}$	4139.51	262.33	6.3
6-10-52	6857- $\frac{1}{4}$	3913.76	284.29	7.3
Total - 4 Wks	27840- $\frac{3}{4}$	16109.70	1114.15	6.9%
Weekly Average	<u>6960</u>	<u>4027.43</u>	<u>278.54</u>	<u>6.9%</u>

All the foregoing shows that an increase in the minimum wage rate from 46¢ to 54¢ would result in a 17.6% increase in our wage bill—6.9% DIRECT and 10.7% INDIRECT.

Assuming an annual wage bill of not less than \$200,000., it is therefore an logical and conservative conclusion that an increase in the minimum wage rate would add not less than \$35,000. to our annual wage bill.

(Whereupon Red Star Manufacturing Co., Inc., Exhibit No. 1 was received in evidence.)

637 THE WITNESS: First of all I made an analysis of the payroll for the week prior to and subsequent to the effective date of the increase to 46 cents an hour to determine the direct effect of increasing the minimum wage from 37-and- $\frac{1}{2}$ which had been the original rate prior to that date to 46 cents and reached the conclusion that that amounted to approximately 10 percent over the previous minimum. That, however, accounted for only the direct increases which resulted from raising the minimum.

BY MR. FELDMAN:

Q Only those from the old minimum to the new minimum? A Yes.

Q That cost 10 percent? A Yes, 10 percent. It did not account for the increase in piecework rates and the hourly rates which were necessary to maintain the proper wage level in the hourly rates, the wage level differentials for the various classifications above the minimum. I then made payroll analysis for a typical, similar week in 1952 which was also under the minimum of 46 cents an hour but which reflected the other indirect increases which had resulted from two successive collective bargaining agreements subsequent to the effective date of the 46-cent minimum. I found that in the cutting, belt backing, convex backing and supervisory and miscellaneous categories which are those affected, there were upward increases in the average hourly earnings in those categories as compared with September, 1950 when the minimum first went into effect. I then applied those figures, those increases to the payroll for September, 1950 to show in percentage what that indirect increase was.

Q You use the word indirect, I take it, to mean those increases you were obliged to give because of the pressure of the new minimum? A That is correct. I then analyzed several payrolls for four different weeks in different months of the year 1952 and applied to those payrolls a 54-cent minimum to determine the direct effect of an increase from 46 to 54 cents an hour, and that came to approximately 7 percent of the total payroll.

Q So the projected effect as you found it of the proposed new minimum was approximately 17 percent, 7 percent direct and 10 percent indirect, approximately? A Approximately 17 percent.

Q Now, I think you testified, you showed at the industry advisory committee hearing the net profit of the corporation in 1951 was 8 percent of the wage bill for that year? A More or less that.

Q The calendar year 1951. What would 17 percent of that wage bill amount to, and what would your showing

have been in 1951 if you had had that 54-cent rate in effect, on the basis of your computations? A Instead of a \$10,000 profit, more or less, that we show, we would have showed approximately a \$25,000 loss.

Q Now, on the basis of your operations from January until now, can you tell us if you had a 54-cent minimum in effect now whether this year would develop into a profit or a loss? A It would not have been a profit.

Q It definitely would be a loss? A Definitely.

Q According to your last published figures, how much is your capital investment in the island? I think it is close to half a million dollars, isn't it? A Approximately a half million dollars. It's in the economic report, a net worth of four hundred twenty-three thousand some odd dollars.

Q For purposes which I will explain later, I ask you Mr. Oetting to tell us how much a one-cent increase in minimum, on the basis of percent operations, would reflect itself in the total increased wage cost on the basis of your calculations. A May I make some quick calculations?

Q Yes, you may.

(Pause)

A An analysis of the probable increase, eight cents from 46 to 54, showed that it would probably add \$35,000 to our annual wage bill. One cent would be about one-eighth of that or \$4,750, approximately per year.

Q What was that? A Approximately \$4,750 a year.

Q Now, I think we correctly analyzed the economic report, table 3, page 7, and appendix table

640 A. and I ask you if you made this computation from those reports and to tell us quickly and briefly the summary of production by gross and changes that have occurred in mainland fresh water, mainland ocean pearl, Puerto Rican ocean pearl and plastics, plastic buttons. Can you give us a quick picture of the trends in produc-

tion in these divisions of the button industry? A I will cite from the statistics presented in the government report, figures for total gross of buttons produced in the years 1939 and 1947 and the gross change, increase or decrease, over those years. Mainland fresh water in 1939 produced 10,139,000 gross of buttons. In 1947, 8,254,000 gross, for a reduction of 1,885,000 gross of buttons. Mainland ocean pearl in 1939 produced 7,174,000; 1947, 5,087,000, a reduction of 2,087,000. Puerto Rican ocean pearl, in 1939 produced 1,083,000 and 1947, 846,000, a reduction of 237,000 gross. All plastics in 1939 produced a total of 36,000,900 gross of buttons. In 1947, 47,870,000 gross for an increase of 10,970,000 gross of buttons.

Q Give us your opinion as to what trend is reflected by these figures. A Referring to the changes, the mainland fresh water over that eight-year period dropped its annual production rate by 1,885,000 gross. Mainland ocean pearl lost 2,087,000 gross a year production. At the same time Puerto Rican ocean pearl lost 237,000 gross while plastics were gaining 10,970,000 or more than double and almost triple the loss of all pearl combined.

641 Q You would say then, definitely, that the development and use of plastics, plastic buttons, is something which all divisions of the natural button industry are concerned with, materially? A Very much so.

Q Is it true that they sell their products in the same fields that your formerly served? A They do, and they have eliminated us from certain fields.

Q Is there a substantial difference between the cost and the selling price, the cost of manufacturing and selling price of plastic buttons compared to the natural buttons; do you know? A Very substantial.

Q Is it large enough to be an important factor in this question of future development of production and sales? A It's large enough to be a very vital factor.

Q You touched somewhat during the industry advisory committee hearing upon the development of plastic synthetics, imitation mother-of-pearl type of buttons; could you elaborate somewhat on that; how far have they gotten with that? A I may have some samples.

Q I wish you would just show that, bring that in here.

MR. FELDMAN: Are the exhibits that were introduced at the hearing going to be available to the Administrator?

PRESIDING OFFICER PARKINSON: They are.

MR. FELDMAN: Were those buttons marked as exhibits?

MR. AMBRISTER: Yes, they are in evidence.

642 PRESIDING OFFICER PARKINSON: These attorneys have worked on that, but I have had no contact with that whatsoever.

MR. FELDMAN: Before the record is closed, I would like to have the opportunity to introduce the exhibits.

PRESIDING OFFICER PARKINSON: Permission granted.

BY MR. FELDMAN:

Q Did your company and other ocean pearl manufacturing companies seek from the Puerto Rican Government the industrial tax exemption which is granted under certain circumstances? Did you obtain such industrial tax exemption? A We have not. On several occasions we have applied and have attempted to have legislation approved that would classify the pearl button industry in Puerto Rico as a designated industry to distinguish it from a new industry.

Q Can you tell us the reasons why they declined to grant the ocean pearl button industry an industrial tax exemption? A We have attempted to obtain the cooperation of the development company.

Q By that you mean the Puerto Rican Industrial Development Company? A Yes, to support such legisla-

tion, and they have made surveys of the industry here and on the mainland looking for the prospects for expansion and whether or not it would be worthwhile to the island of Puerto Rico to grant tax exemption to us, to our industry. And as a result of their survey, they refuse to sponser such a bill because they feel
643 that ours is not an industry that has the possibilities of expansion.

Q They consider the expansion of the ocean pearl industry very doubtful? A Very doubtful.

Q And they are inclined to grant you—they declined to grant you the exemption? A Yes.

Q Do you know if they granted a tax exemption to any other company on the island? A Caguas Button Company.

Q What kind of buttons do they make? A They make several varieties of buttons. They make braided leather buttons and plastic buttons.

Q I hand you a letter addressed to your company in Puerto Rico. Will you tell me what the letter is, what is attached to it? A Shall I read it?

Q First tell us what it is. A It's a communication from our law office in San Juan.

Q Who are they? A The law office of James R. Beverley.

Q What do they say? A "I now forward to you original and three signed copies of the Certificate obtained by me today from Mr. Max Goldman, Director of
644 the Office of Industrial Tax Exemption of the Government of Puerto Rico, which you requested today." It is signed Jose Lopez Baralt.

Attached to it are several copies of a certificate on official paper of the Government of Puerto Rico, Office of Industrial Tax Exemption. "This is to certify that the official records of this Office disclose that the Caguas Button Company received a grant of tax exemption on December 22, 1948, and that the transfer of this grant to

the Caguas Button Corporation was authorized on March 16, 1951." It is signed by Max Goldman, Director, and certified by a notary public, October 3, 1952.

Q To your knowledge, have any other ocean pearl manufacturers on the island received any tax exemption?

A None.

Q They have made similar applications that you have made? A We have made common efforts to obtain the exemption, and we have always been unsuccessful.

PRESIDING OFFICER PARKINSON: Was that granted to leather?

MR. FELDMAN: Just the plastic button manufacturers.

PRESIDING OFFICER PARKINSON: Your question was confusing then. You said "any other ocean pearl".

MR. FELDMAN: Besides his own application I wanted to make sure of the other companies. He said they made common effort. I wish to offer in evidence this correspondence from San Juan here.

PRESIDING OFFICER PARKINSON: What was your answer—no, on that. You made common effort but—

645 THE WITNESS: None of us were able to obtain it. The effort was to obtain exemption for the industry.

BY MR. FELDMAN:

Q How long have you been connected with the ocean pearl manufacturing business? A Twenty years.

Q Under present conditions, can you tell the Administrator what the outlook is for the ocean pearl industry, not only in Puerto Rico but in the mainland as well in terms of its revival as an industry specifically from the standpoint of this competition in recent years, the growing competition from plastic buttons? A We have our backs against the wall, and we are fighting for survival. The trend of production, the trend of price up and down,

the competition from plastics has been terrific. We are constantly encountering loss of market due to that concentration. We ourselves are investigating the possibilities of turning to plastic buttons.

Q This is a situation where the crisis is deepening I take it, monthly, on this problem? A It's becoming more and more critical.

Q And it is true it has been acknowledged by other divisions of the natural button industry? A That is true.

Q Nevertheless the Puerto Rican Government gave the only exemption to the plastic button people? A To the plastic people.

646 Q Is the outlook from now on, in terms of employment, does it indicate that you will approach a full work-week soon or you will be working on the same basis, a fractional work-week from 30 to 36 hours a week? A From our experience in the past year or so, my observations of the trend, and my judgment as to the future, I can't see any hope for much improvement.

Q If this new minimum as recommended by the committee should go into effect, what effect would that have on employment opportunities? A More than ever than in the past because of the fact it is reaching a very critical point. I would anticipate a curbing of the opportunities for employment.

Q That would be reflected in one of two ways. You would have to either lay off people or reduce the work-week still further? A You would probably have a combination of the two, that is, dismissal of certain marginal workers who will be unable totally to reach the 54-cent minimum if approved and curtailment among the others.

Q Are business conditions such in your industry that you might be able to pass on the increase of 17 percent, approximately, to your customers by way of rising prices? A That could not be done because primarily plastic buttons are already sold cheaper than ours, that we

would be cutting ourselves out of more market by attempting to pass that rise in cost to our customers.

647 Q Is it entirely possible that the ultimate position of the industry will be that of making a few luxury buttons or so-called better items? A We would have to limit our production to those better items on which we could possibly make a margin of profit; could be.

Q Is there any way you could get increased production at this time through any method whatsoever so as to enable you to absorb the cost of increases that this proposed order might entail? A In Puerto Rico?

Q Yes. A We have installed all the modern mechanical appliances that are known to the industry in an effort to increase productivity. I know of no further means that we could adapt to achieve that end.

Q Do you know anything about the fresh water button industry? A Only what I have read and learned at the previous committee hearings.

Q You have heard of the name, B. Schwanda and Sons have you not? A Yes.

Q And you have heard that Muscatine, Iowa is sort of the central production area? A Yes, Muscatine I believe is the center of the fresh water pearl industry.

Q Do you know whether any ocean pearl is produced, manufactured out there? A I believe some is.

648 Q How did you learn that fact? A We have heard it from reference in the trade, but we have obtained recently certain credit reports on various fresh water pearl button manufacturers, and it is stated in some of those reports that those manufacturers are manufacturing ocean pearl.

Q Now, you were at the industry hearing when Mr. Speith of McKee Button Company was present, took the stand and made a statement on behalf of the fresh water people? A I was.

Q I think at that time he and Mr. Fickett were speaking in behalf of the industry? A That is true.

Q Mr. Fickett in behalf of the association and trade group and Mr. McKee as an individual member or perhaps as an officer of that trade group too? A I believe Mr. Speith testified that he represented the McKee Button Company.

Q Yes. Now, McKee never said anything about manufacturing ocean pearl out there in Iowa, did they? A No.

Q They said they were exclusively engaged in fresh water; they represented themselves to be? A I recall that somewhere in the testimony Mr. Fickett stated that so far as he knows only one was engaged in the
649 manufacture of mother-of-pearl, and I believe Mr. Speith confirmed that.

MR. FELDMAN: Mr. Hearing Officer, I should like to say at this point that we have been operating under—

THE WITNESS: To clarify a point for the record, Mr. Fickett said that to his knowledge only one manufacturer was engaged in producing both fresh water and mother-of-pearl, and Mr. Speith confirmed that.

MR. FELDMAN: We have been, Mr. Hearing Officer, at a considerable disadvantage, facing an industry advisory committee with suggestions of competition with other groups of industries having our own problems to contend with. We could do no less than we did but open our books completely, and we did to the view of the industry advisory committee and to the officers, agents of the Wage and Hour Administration, and we did. They asked for data which was produced for them. They went into very intimate questions, and we did not seek to hide behind any confidential relationship or claim of disclosure of business, but implicit in the case made by the record presented before the industry advisory committee is the point that the decline of production of fresh water buttons, even though there was a similar decline in ocean pearl, both mainland and in Puerto Rico, and a corresponding vast increase in plastics, that at least

part—one couldn't say how much—at least part, and I am being very charitable when they say they suggested part of them; perhaps they went further than that, they might have said a good chunk of that business was lost, was due to Puerto Rican production which also declined in the same period. They were advocating the highest possible minimum for the Puerto Rican producers, and

650 I say you who are present today, when I attempted to find out who these companies are, that we are being matched against, mainland producers of ocean pearl, I was not able to discover that information. I can only tell you we gave everything we had.

Well, the only way we knew how to present the other side of the story was to go to the agencies that give information regarding the standing of companies currently throughout the fresh water and the ocean pearl industry, and I have here photostatic copies of analytical reports, current ones, for the representative ocean pearl button manufacturers in the United States, mainland producers, and the representative fresh water ocean pearl button producers. And I have typed on these sheets, in order not to fill the record with all the data that is contained here, the pertinent excerpts from the analytical reports which deal with the volume of business, profits, and other important information which can tell you something about the standing of the companies.

I should like to read briefly from some of the extracts on fresh water pearl, fresh water button manufacturers. Now, the McKee Button Company was a leading spirit at the hearing in San Juan. Mr. Speith of that company was present and took an active part. So we have as of August 25, 1952, the analytical report, and here are excerpts from it. It says for McKee Button Company, 1000, Hershey Avenue, Muscatine, Iowa that it "Started around 1893 and now handles a volume believed to be well into seven figures annually. Operations are reported profit-

able. A financial statement is not made available,
651 however, the management reports the tangible net
worth to be in excess of \$500,000." It says here
that they "Manufacture fresh and ocean pearl buttons and
plastic buttons."

Now, Mr. McKee, who was telling us about the plastic
problems and the ocean pearl situation is apparently en-
gaged in the same business. Now he says that the "Fresh
water buttons are made from mussel shells obtained in
domestic waters and ocean pearl buttons are made from
shells obtained in western Australian waters." He said,
"This business was started around 1893 as a small button
cutting plant and it is now one of the world's largest
button manufacturers. The management declines to make
its operating data available, however, it is believed that
the annual volume of this concern runs well into seven
figures and on August 25, 1952 Secretary Laten Brown
reported that sales thus far during the current year com-
pared favorably with the volume handled for the similar
portion of 1951. He reported that operations are profit-
able and that earnings also are comparable with those for
the same period of the previous year."

"Secretary Laten Brown stated that at this particular
time, the inventory was lighter than would usually be
found at this time of year due to the fact that the com-
pany has designed a new machine to produce blanks
more cheaply and that this machine is now in process of
being installed. Therefore it is stated that inventory has
been kept at a minimum until installation of these ma-
chines is complete and full production through their use
can be started." I have the original and the extracts
which I wish to offer.

652 PRESIDING OFFICER PARKINSON: Let the
reporter mark each exhibit.

(Whereupon Red Star Manufacturing Co. Exhibit No.
2 was received in evidence.)

MR. FELDMAN: The first is McKee Button Company.

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-A was received in evidence.)

MR. FELDMAN: I have next the statement regarding the Hawkeye Pearl Button Company of Muscatine, Iowa.

"This business has been under its same general management since it was started in 1903. Annual sales are reported to be steady and are in excess of \$1,000,000.00 yearly."

"Charles C. Hagerman and Joseph Rogers are General Partners with Charles R. Hagemen in the Iowa Pearl Button Co. That concern is a manufacturer of fresh water pearl buttons, plastic buttons, and costume jewelry. At the fiscal closing of December 31, 1950 that business had a tangible net worth of \$135,911 and was in sound financial condition."

"Manufacturers fresh water and ocean water pearl buttons . . . produced entirely from mussel shells and other types of shells obtained in both fresh water streams and from ocean shell beds throughout the world."

"The company's products are distributed to a nationwide trade, and its annual sales are reported to be in excess of \$1,000,000 . . . Operations have been reported profitable over a period of years."

"On April 16, 1951 Secretary and Treasurer Fred W. Herman reported that sales continue to compare favorably with previous years, and stated that operations
653 are profitable."

(Whereupon Red Sar Manufacturing Co. Exhibit No. 3-B was received in evidence.)

Next, Automatic Button Company, "Annual sales . . . in excess of \$1,000,000 and operations are reported profitable."

"Manufacturers fresh water pearl buttons and some ocean pearl buttons." So it seems from the three I've

read so far the report they make is on ocean pearl although it was stated they didn't.

"Manufacturing plants in Monticello and Wilton Junction, Iowa, Harrison, New Jersey and New York City."

From 1948 they have a net worth of \$369,358; 1949, \$394,094; 1950, \$433,641.

"The company has a policy of paying about 45 percent of its earnings after taxes to officers, stockholders and employees."

"On May 1, 1951 Secretary Carl H. Umlandt reported that sales of the current year have compared favorably with the volume handled for the similar portion of the previous year and reported that operations continue to result in profitable returns."

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-C was received in evidence.)

Weber and Sons Button Company, Muscatine, Iowa, June 26, 1952.

"This business was started in 1917 and now handles what is believed to be a substantial annual volume at a profitable margin. The management declines all balance sheet information, however, it is believed that the tangible net worth of this concern is in excess of 654 \$150,000. The financial condition appears to be satisfactory and supplier comment is favorable."

"The management of this concern declines to make a balance sheet available and has declined all requests for financial information. However, based on investigation withoutside sources, it has been determined that the volume handled by this concern continues to be comparatively steady with its previous years and that its operations are resulting in profitable returns."

(Whereupon Red Star Manufacturing Company Exhibit No. 3-D was received in evidence.)

The Muscatine Pearl Works. This is an important one, June 16, 1952:

"Annual sales are in excess of one million dollars and operations are profitable."

"This enterprise started in 1920 and has been under its present general management since 1935. It has, through the years of operation, become a well-established concern in this city which is regarded as one of the leading button manufacturing centers of the country. Annual sales are in excess of one million dollars and operations are profitable."

"The financial condition as of October 31, 1951 was sound."

"On the whole, the financial condition was sound and supplier comment favorable."

"On June 12, 1952, Edward Rosemund, Treasurer, 655 reported that sales thus far in the current fiscal year which ends October 31, 1952 were comparable to the sales for the corresponding period of the previous year and operations continue to be profitable. The balance sheet of October 31, 1951 was reviewed and is reported to be generally applicable at this time. On the whole, a sound financial condition is in evidence and supplier continues favorable."

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-E was received in evidence.)

B. Schwanda and Sons. Now, this is one of the largest big guns in the world who first complained about Puerto Rican production. I have here a statement on them. They are rated AA1 and that is about as big as you can go, and their net worth is in excess of \$1,500,000, and the management reports, as a result of heavy purchases from abroad at the end of 1951, working capital became temporarily tied up. This has resulted in some slowness in the retirement of trade obligations. It is reported, however, that this condition has since improved and bank comment is favorable. They have shown a constant increase in their net worth, and they have unlimited credit. I think I have no further information except they can get

all the credit they want, and they are probably the biggest outfit there is.

Interviewed on April 10, 1952, Mr. Frances Kroupa, General Partner, stated that the operation during 1951 was on a profitable basis with sales continuing along satisfactory proportions in 1952.

This is the same B. Schwanda who wrote the letter which was read at the industry advisory committee hearing claiming unfair competition from the ocean
656 pearl manufacturers of Iowa, and the 20 years they have been on the island, nobody has grown to the size of Schwanda or the other big mainland pearl producers, and we have very little hope that they will, although my desire is the other way, of course.

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-F was received in evidence.)

Leo H. Hirsch and Company, New York City, another company that sent a letter which considers itself adversely affected by the minimum wage and recommended the full amount of 75 cents for ocean pearl, Puerto Rico. The analysis of their financial reports read:

"Operations conducted profitably for many years, with current investigation disclosing a net worth in excess of \$600,000. Detailed balance sheet not made available for publication although investigation discloses the maintenance of a sound financial position, with cash alone covering indebtedness. Bank and trade comment is favorable."

"Periodic investigation over a period of years has all along indicated the maintenance of a sound financial position. Steady growth in tangible net worth has been reported through retention of at least a portion of the annual earnings."

"In an interview on December 19, 1951, Leo Hirsch, partner, reported that operations of the corporation have continued along profitable lines, with sales holding at satisfactory levels. He stated that volume for 1951 had shown a moderate decline over that transacted for the

same period of 1950, although operations had remained profitable."

657 (Whereupon Red Star Manufacturing Co. Exhibit No. 3-G was received in evidence.)

Adelphia Pearl Button Company of Philadelphia, Pennsylvania, January 10, 1952.

"It is represented that, while volume has declined in 1951, profits nevertheless realized."

"May 29, 1952—On May 29, 1952, George R. Adey, Sr., President and Treasurer, declined precise operating data with regard to trading in calendar 1951 but did make the statement that profits had been earned and at least in part retained in the business."

"With regard to the sales level thus far in 1952, the president represented it as at a satisfactory level and referred to profits as being enjoyed."

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-H was received in evidence.)

Peerless Pearl Company, Camden, New Jersey, February 20, 1952.

"Business established in 1898 with present corporation dating from 1920. Late operating details lacking but outside authorities indicate volume in low six figures being handled yearly. Results of operations not determined. Financial statements withheld but indications are that net worth exceeds \$100,000. Indications are that satisfactory conditions exist."

"June 13, 1952. On the above date, Platt stated that the firm presently is maintaining a satisfactory condition, but declined substantiating figures."

658 (Whereupon Red Star Manufacturing Co. Exhibit No. 3-I was received in evidence.)

Next, a small company by the name of Ronda Button Company.

"Late financial figures not submitted. Affairs appear in order, a steady volume controlled with sales appearing profitable."

The financial statement shows assets of \$191,000, and surplus and undivided earnings of \$59,000.

(Whereupon Red Star Manufacturing Co. Exhibit No. 3-J was received in evidence.)

PRESIDING OFFICER PARKINSON: Let's take a few minutes recess.

(Short recess)

PRESIDING OFFICER PARKINSON: We will proceed if you are ready.

BY MR. FELDMAN:

Q Mr. Oetting, did you make an analysis for the period 1948 to 1952 of the average number of workers, the average number of hours worked, man-hours per week, for the Red Star Manufacturing Company's operations in Puerto Rico? A Yes, I did.

Q Do you have that before you? A I do.

Q Will you state what your study showed, how you developed the figures and what it showed?

PRESIDING OFFICER PARKINSON: Let's call that Exhibit No. 4.

(Whereupon Red Star Manufacturing Co. Exhibit No. 4 was received in evidence.)

659 BY MR. FELDMAN:

Q I am now referring to Red Star Exhibit No. 4 which is a study you made on the payroll, average hourly earnings, average total manhours per week, average number of workers and average manhours per workers per week for the years '48 through '52. A That is correct.

Q Now, will you explain how you developed these figures? A I made a detailed study of the weekly payrolls for that five-year period, and determined the average weekly payroll for each year, the average hourly earnings for the corresponding year, the average total manhours per week and the average number of workers, and the average manhours per worker per week for those periods.

Q What do you show for 1948? A For 1948 it showed an average number of workers of 246 with average manhours per worker per week, 33.4.

Q And 1949? A 173 workers, 34.4 manhours per worker per week.

Q 1950? A 272 workers; 34.4 manhours per worker per week.

Q 1951? A 210 workers; 29.6 manhours per worker per week.

Q And 1952? A 1952 through July, 191 workers, and 32.2 average manhours per worker per week.

660 Q Now, you have the complete record from which this was developed? A Yes.

Q Here with you for examination by any one who wants to see it? A Correct.

Q In other words, you have all your work sheets for each year mentioned? A Yes.

MR. FELDMAN: That's all I have, Mr. Hearing Officer.

PRESIDING OFFICER PARKINSON: Any questions Mr. Judge?

MR. JUDGE: No questions.

MR. FELDMAN: The record doesn't show these reports are Dun and Bradstreet reports.

PRESIDING OFFICER PARKINSON: What do you mean by "these"?

MR. FELDMAN: The exhibits, Red Star Exhibit 3-A—

PRESIDING OFFICER PARKINSON: The series of exhibits, number three series, are taken from Dun and Bradstreet reports.

MR. FELDMAN: The original reports which are attached to the abstracts containing pertinent data taken from it.

BY MR. JUDGE:

Q Has there been any change in the selling price of buttons by the Red Star Manufacturing Company in New

York since the date of the hearing? A No.

661 Q Is the method by which their price is determined the same, which you testified to at that time? A That's right.

PRESIDING OFFICER PARKINSON: Call your next witness.

(Witness excused)

WHEREUPON

Mr. Leon H. Craft

a witness appearing on behalf of the Manati Pearl Works, Inc., after being duly sworn, testified as follows:

Direct Examination

BY MR. FELDMAN:

Q Your full name, Mr. Craft. A Leon H. Craft, C-r-a-f-t.

Q What is your position with the Manati Button Works, Manati, Puerto Rico? A Manager.

Q Are you the same Mr. Craft who testified before the industry advisory committee? A Yes.

MR. FELDMAN: I wish to correct the record that his name has been misspelled throughout the entire record as K-r-a-f-t. It is C-r-a-f-t, and he is the same person who is referred to in that record taken before the industry advisory committee.

BY MR. FELDMAN:

Q You were called as a witness, and several
662 members of the industry advisory committee at the hearing attempted to elicit from you a statement as to the probable effect on your wage structure of a series of suggested minimums higher than the prevailing one of 46 cents; do you recall that? A That is correct.

Q You were not able to give it at that time? A No.

Q Since the recommendation of 54 cents has been made by the advisory committee, are you now able to

give us information as to the possible effect upon your wage structure of such a minimum? A I think you have the copies.

Q Yes. Did you prepare any records showing the, projecting the wage bill that the proposed new minimum would entail by your company? A Yes, we have it here.

(Witness hands instrument to Mr. Feldman.)

Q Thank you.

MR. FELDMAN: I offer as Manati Pearl Works Exhibit No. 1 an analysis of additional production labor cost resulting from a proposed increase to 54 cents recommended by Special Industry Committee No. 12, based on payroll week, ending August 29, 1952.

PRESIDING OFFICER PARKINSON: Mark it please, Mr. Reporter.

(Whereupon Manati Pearl Works Exhibit No. 1 was received in evidence.)

663 BY MR. FELDMAN:

Q In other words, you took the payroll ending August 29, 1952 and applied to that payroll the increases that would be curtailed if the proposed minimum was applicable to that payroll period? A That is right.

Q Now, I see that the increases range from 13.1 to 17.4 in the various departments in your plant. Will you explain how you arrived at those percentage increases? A First, we had indirect consisting of 16 employees—

Q In other words by indirect you are referring now to those who were above the minimum? A That's right.

Q And therefore indirectly affected by it? A That's right, but they were so near the margin that they definitely will have to be increased likewise, and I have applied for that increase, just the difference recommended between the two minimums.

Q So we will call that direct rather than indirect, all right, because that's where I think Mr. Oetting used it.

In other words, as to the first line of 13.1, with those percentage figures that you have at the extreme right column of Manati Exhibit No. 1, were these based upon prior experience in connection with what took place when minimums were increased? A Yes.

664 Q In other words, you had experience when the 46-cent rate went into effect several years ago? A That is true.

Q Did you make an investigation of the payrolls subsequent to that increase to determine what effect it had on your wage cost up the line? A We investigated the payrolls of that period, and we found that an increase was indicated; however, I do not have that specific payroll worked out for that period. This data here (indicating), for a number of these departments, they are already working on a 46-cent minimum.

Q So all you had to do was— A Apply a 54-cent minimum.

Q To raise it up the eight cents? A That's right.

Q As to the others, how did you compute the increase? A Well, the cutting department, for instance, we took the average earnings per hour for the cutting department which amounted to 55 and 1/2 cents an hour, and we knew from previous experience that the cutters would not be satisfied when the new minimum went into effect; substantially the same differential would have to hold when the new minimum became effective.

Q In other words, they would have to enjoy a wage earning at a comparable higher level than the lower paid workers and that increase you calculated when the 46-cent minimum went into effect; you found as
665 to those workers who earned above 46 cents that you had to give them certain increases? A That's true.

Q And the percentage figure you applied was how much to the current average earnings of the workers working above the minimum? Has it been your experi-

ence throughout your operations with the labor unions and minimum wage operations in Puerto Rico that this is the method by which you would have to ultimately deal with any increase in the minimums? A Yes.

Q Projecting that now to the payroll you had on August 29, 1952, how much more a week would that payroll cost you if the 54-cent rate had been in effect for that week? A \$396.58.

Q And on an annual basis how much would that be? A \$20,622.16.

Q What was the net result of your operations for the calendar year 1951? A We lost almost \$5,000. I don't recall the exact figure. I can supply it.

Q If you had no change in those operations for '51, your loss would be increased by the effect of the minimum alone in 1952 by some twenty-five thousand? A Approximately \$25,000.

Q Now, at the hearing in Puerto Rico, you were
666 asked if you had the statement of the operations and affairs of the parent company in the States to whom you sold all of your buttons. Now, you were not able to produce it then, but do you have a statement now? A I think there is a statement here.

(Witness hands instrument to Mr. Feldman.)

Q This is a statement from Daniel Nachbar and Company, Certified Public Accountants, 18 East 48th Street, New York, New York, dated October 2, 1952, addressed to, Excelsior Pearl Works, Inc., 95 Madison Avenue, New York 16, New York, reading:

"Gentlemen:

Pursuant to your request and based upon our examination of the accounts of your company, we hereby certify that its operations for the year ended December 31, 1951 resulted in a net loss of \$61,246.77." A Yes, that is the letter.

MR. FELDMAN: I wish to offer this letter as Monati Pearl Works, Inc. Exhibit No. 2.

(Whereupon Manati Pearl Works Exhibit No. 2 was received in evidence.)

BY MR. FELDMAN:

Q Since the hearing since you last testified, did you make a computation of the average weekly manhours worked by employees from May, 1949 to January 1952? I asked for that Mr. Hearing Officer because you recall earlier the economic report gave two spot figures for the whole industry of employment identical between 667 November, 1949 and January, 1952. We were not able on a short period of time to work up month by month all the figures, and when Mr. Craft was not able all of a sudden to go back and get me certain data, so what they have here—we happen to have payroll records in New York, and because of the sheer bookkeeping of the thing we took it from November 4, 1949 to April 7, 1950—is that as far as you were able to go? A Yes.

MR. FELDMAN: I offer in evidence an analysis of the average weekly manhours during the period November, 1949 through January, 1952. We give the dates of each payroll, the number of hours worked, the number of persons employed, and we give the average hours per man per week for each week.

Now, I want to point out that the fluctuations are wide, so wide that as they were in the case of Red Star that if you took the whole industry together on any particular date, it isn't likely that you would get an even, round figure for the two periods, except in the economic report, and that was just one of those million to one shots. How it ever happened I don't know, but 428 and 428, and here is how they read; for example, you see, therefore, the year 1949 starting with November 4th date on which date there was 170—

PRESIDING OFFICER PARKINSON: You are referring to Manati Exhibit No. 3?

MR. FELDMAN: Manati Exhibit No. 3.

PRESIDING OFFICER PARKINSON: Mr. Report-

er, you are keeping these exhibits straight, are you, because you are going to need some of them, and
 668 since we don't want to divide them, we are going to expect you to take all of them.

THE REPORTER: Yes.

PRESIDING OFFICER PARKINSON: Is there any objections to these exhibits up to this point? If there are none then they are all received.

(Whereupon Manati Pearl Works Exhibit No. 3 was received in evidence.)

MR. FELDMAN: For the four weeks of November, 1949 the average manhours per week jumped from 35, 29-and-1/2, 33, and 28-and-3/4, with almost an equal level of employment of 161, 171 and 167. The following month of December, 1949 we have a low of 161 workers to a high of 190 workers with a fluctuation of 19 and 6/10's hours per week—that's the New Years week—as high as 37-and-1/4. In January, 1950 we have fluctuations from 12 employees to 192, and we have hours worked, 24 hours to 37-and-1/2. On February 3, we have—for that four-week period—we have from a low of 175 to a high of 184 employees with a fluctuation from 36 to 37 hours. In the four weeks of April we have a low of 176 to a high of 181 with a fluctuation of 28-and-1/10's hours to 38-and-1/20th hours; and in 1951, January, we took spot periods. The reason we took that period, those were the dates we used in the economic report, so took those out from November, December, January, February, November 1949 through April 1950; then we went from January, 1951 through December, 1951, and from January 4, 1952 through February 1, 1952. Now, in 1951 we have a fluctuation of three weeks there with a low of 151 employees and a high of 204 with 18-and-3/10's average manhours per week to a high of 37. Then we
 669 have in February from a low of 147 to a high of 198 and a fluctuation of 28-and-4/10's hours to 36-and-8/10's hours; and, incidentally, there is no relation be-

tween the average hourly low and high and the number of persons employed. That is how curiously it is confusing; that is why it was incredible two dates picked at random for the whole industry could come to an equal number. It just doesn't have that pattern.

So that throughout you see, never touching the 40's, with lows in the 20's and the 18's, and the highs average around 34, 35, this is the rate of average hours per week employed, and Manati has been attempting to expand because it's a newer company, and it has had a larger labor turnover.

BY MR. FELDMAN:

Q Now, were these figures made under your supervision and direction? Are they true and accurate? A Yes.

MR. FELDMAN: That's all I have to offer at this stage. I don't know what procedure you are going to rule with regard to statements of counsel or briefs.

PRESIDING OFFICER PARKINSON: Is there any more evidence to be offered at this time from anybody?

MR. FELDMAN: I have just one more thing before we close. I wish to have Exhibits 1 through—I think I have it here. I want to call attention to the Hearing Officer, for the record, to the minutes of Special Industry Committee, the Advisory Committee for the industry which you have before you for consideration, at the time you made the recommendation on July 1st.

Now reading from the minutes, page 20, Exhibit 1-F, July 1, 1952, there is contained the statement, the committee reconvened at 10:45, the members were present for the public, employees and employers. Then it says under the caption "Pearl Button and Buckle", "Mr. Vick moved that the committee recommend a rate of 53 cents an hour for the Ocean Pearl and Other Natural Shell Button and Buckle Division of the industry. Mr. Villamil seconded the motion, and it was carried by a vote of six to three, labor voting against it." Later it appears, two

paragraphs below that, "Pearl Button and Buckle", now it says at the suggestion of Mr. Wirtz the committee decided to reconsider the recommendation for the Pearl Button and Buckle Division for the purpose of obtaining unanimity. Then it contains the following statement: "Pearl Button and Buckle" is the heading. "Mr. Wirtz then moved that the committee recommend a rate of 54 cents an hour for the Pearl Button and Buckle Division. Mr. Villamil seconded the motion, and it was carried unanimously."

I pointed out that one-cent alone meant to Red Star—
MR. OETTING: \$4,750.

MR. FELDMAN: Close to half its profits of last year. In the case of Manati, if it's a twenty-five to thirty thousand bill, you divide that by an eighth, and you get from three to four thousand there. This one-cent which was the result of the unanimity—of course, I
671 didn't know they permitted quotient verdicts; I didn't know the industry advisory committee reached its conclusions in that way. But here is the record here (indicating), and I am reading it in because I think it indicates that the committee improperly carried out its function in that no effort apparently was made to do anything more than achieve unanimity, as a result of which they must have bargained among themselves on the principle of quotient verdict rather than on the consideration of the pertinent economic data and the directives which the law requires the Administrator and the committees to follow. So that if the recommendation is before you properly—and you heard my challenge on that earlier—I point out to you another ground for rejecting a recommendation of the industry advisory committee on the ground that they improperly carried out their functions as evidenced from a reading of the minutes of the meeting at which they made the recommendations now before you.

PRESIDING OFFICER PARKINSON: What is your name?

MR. FICKETT: Mr. Chairman, my name is W. P. Fickett.

PRESIDING OFFICER PARKINSON: Just a moment, please; I'm sorry.

MR. JUDGE: I would like to ask a few questions for clarification by Mr. Craft.

BY MR. JUDGE:

Q Mr. Craft, is there any way of telling what profit or loss Excelsior Pearl Works may have had on the buttons from Manati Pearl Works which it handled? A

Perhaps Mr. Chilson would be better able to answer 672 that. I am in no position to say whether or not anything is kept separate.

MR. FELDMAN: Excuse me for interrupting; I just have this comment to make: During the hearing, Mr. Hearing Officer, the record was replete with innuendos to the effect that the island company selling to the domestic company, the parent company, could juggle if it wanted the selling price of the unfinished blanks that were finished here in such a manner as to show a loss whereas otherwise the operation might be profitable.

We were not able at the time, nor did we expect it—we were not represented by counsel at that hearing; we were not prepared to and did not know they were going to ask for Excelsior figures, but when we heard of that fact the record was already closed, so the first opportunity of showing we had—that that didn't take place was to give you the Certified Public Accountant's statement regarding Excelsior's operations for 1951 showing a loss of \$60,000.

I want to say in this connection that there is a disparity in income tax rates more favorable to island operators than there are to domestic corporations, that would be most foolhardy for any one to think that—that one would throw profits to the mainland if he had control of the two

corporations in order to show a loss on the island; that just doesn't make sense. If there were profits, it would be much better to receive them all at a lower tax rate on the island; that is one thing. That is the reason I gave you the data regarding Excelsior. Now, any further breakdown of Excelsior's operations, I want to point out to you that Excelsior's operations are in part the selling of buttons finished from unfinished blanks made in 673 Puerto Rico. It goes without saying, therefore, that a good part of the operation, maybe more than 50 percent of the direct labor cost involved selling at the Excelsior and is a Puerto Rican operation; I mean, therefore, I would say that the losses would have to be related to the Puerto Rican operation, but how much I could not say.

MR. JUDGE: The company does have a plant here in the States?

MR. FELDMAN: Yes, but the kind of buttons that are cut are not cut in the States. Here they make a finer and bigger line button.

MR. JUDGE: Do you know whether the manufacturing operations here in the States are profitable?

MR. FELDMAN: I don't know whether they are broken up that way. Could you answer that?

MR. CHILSON: They were not profitable.

MR. FELDMAN: We know they weren't profitable; they lost \$60,000. We know that marking up the over cost, the buttons made in Puerto Rico, because of the failure to achieve the volume, the overhead killed it. In other words, at a certain volume you would have made a profit; the overhead would have been spread over a larger number of units. A loss was shown at Manati Pearl Works and at Excelsior because there was an underselling; you can see from the shorter manhours. In other words, there was a complete decline in the falling off of production throughout the ocean pearl industry in Puerto

Rico and the States. This industry is not going ahead;
it is going back.

674 BY MR. JUDGE:

Q Mr. Craft, do you know whether any inventory breakdowns were taken by Manati Pearl Works or the Excelsior Button Company in 1951? A No, not to my knowledge.

Q Could you supply us with figures? I believe in Puerto Rico we had a profit and loss statement for most of the companies, at least over a period of several years. Would you be able to supply us with figures for Excelsior since they started operating in Puerto Rico?

MR. FELDMAN: I am glad you asked that question, and I am waiting to comply with it, but it is just a difference in attitudes. There was nothing about—you see, we are probing into a company that is secondary, you know, that is not the employer on the island and is affiliated with a company there, and as remote as they are we furnish information voluntarily. I can't get the same kind of information on that basis from the persons who appear at the hearing in opposition. It seems to me that if a company appears as representative, makes an appearance, has obligation to support its position, to come forward with the same information that it elicits from and closely examines with regard to the parties in interest. This business of coming in and claiming an unfair advantage in competition in abstract, in a vacuum, and then having the Administrator show such a diligence when it comes to probing into our business, I think you should show the same—I think; my point is this: Your duty is to protect us as well as to raise the minimum, and
675 the same diligence should be shown in inquiring into data which would support, if possible, our theory; and our contention is that it isn't exploring our case in order to determine the validity of our position. Do I make myself clear?

MR. GLASER: I would like to say in that connection, Mr. Feldman, there are the two aspects—

MR. FELDMAN: Yes, I know; one is competition from the mainland, and the other one is the preservation of employment opportunities on the island. The two are there. One requires you to protect us, and one requires you to protect the competitors in the States.

MR. GLASER: There is another angle too. The Administrator, under Section 8 of the Fair Labor Standards Act, has a duty to fix the highest minimum which will not substantially curtail—

MR. FELDMAN: We are back again to these two standards.

MR. GLASER: Therefore it is pertinent though in that connection, in fixing the highest minimum—

MR. FELDMAN: I think you should show the same kind of diligence. Maybe you don't get my point. There should be the same kind of inquiry, the same kind of drive to protect the island, frankly, because you are jeopardizing—ocean pearl is being jeopardized nationwide and islandwide. It is particularly under attack on the island. To say that people will stand by on an operation like this—Manati, for example—is ridiculous. Now, you've got to remember we are talking about a company that has close to 40 percent of the employment, maybe fifty; so I

say to you that when a company with 50 percent
676 of the employment is losing money and will double
of treble its losses as a result of your minimums,
and is working at less than a full work-week and has for
a considerable period of time, and is against competition
with plastics or granted exemptions by the Insular Gov-
ernment not given to this industry, it has no future there,
and Puerto Rico says it has no future. One division in
Puerto Rico says we will not give them an exemption
because they have no future. Another division of Puerto
Rico, the Wage and Hour group, says you should pay a
higher minimum wage because you are flourishing. It

just can't be both ways. Somebody is mistaken. One division of the government says we see no room for expansion therefore we will not grant you an industrial tax exemption, and another division says you are flourishing, pay higher minimums. Somebody is wrong.

MR. GLASER: I don't know which division you are referring to. There's a lot of divisions.

MR. FELDMAN: The Wage and Hour Division. They are presenting a demand for a higher minimum on the theory that we can afford to pay it and will not jeopardize employment, right?

MR. GLASER: The only purpose of this proceeding, as you know Mr. Feldman, is to obtain the facts as they relate to the issues.

MR. FELDMAN: A man from Mars would be surprised if he didn't get a feeling that the administrative officers here weren't interested in pushing a higher minimum.

PRESIDING OFFICER PARKINSON: I think we understand each other's point of view, at least. Mr. Judge, what is your question? Do you wish to pursue it further?

677 MR. JUDGE: As you may have noticed from the record, Mr. Feldman, the Red Star Company operated at a profit throughout the four-year period that we have for '48-'49.

MR. FELDMAN: So have all the other button companies on the mainland.

MR. JUDGE: And Manati operated at a profit for the entire period since its been started.

MR. FELDMAN: How much profit? This is interesting. Is there an economist in the Wage and Hour Division who assumes we are there for love and affection. I can tell you we are on the island to make a profit; we are in business to make a profit, but saying you made a profit ergo you can now make an increase of 70 percent in your wage bill at a time when the industry is de-

pressed, when business conditions are at a low ebb, when there is a falling off in the demand for the product and where 42 percent of the industry lost money last year, an employer of over 42 percent of all the employees lost money last year, and at that same rate will lost twenty-five thousand more, is this the time to raise the minimum from forty-six to fifty-four cents?

MR. JUDGE: Is it your contention that 1951 is a representative year?

MR. FELDMAN: I want to tell you about 1951 and 1952. As far as ocean pearl is concerned, I can't see any light for them except another police action like the Korean thing that would start a boom. In other words, if you've got shell that will go up 75 percent overnight, and if you've got a demand from the garment trade, regardless of their needs, just a speculated demand, then

everybody in buttons is going to make money, fresh
678 water, ocean pearl and everybody. If we could live off that fat for a few years—1951 is the normal operation from here on in; this is it; this is the demand for mother-of-pearl buttons and ocean pearl; this is the cost of your raw material. Labor costs are higher, and your selling price can't budge. Now, what then would you say to those factors? This is it. If you can show us where we can make money, a dollar minimum wouldn't mean anything to us. During war time I saw the South go ahead and pay all kinds of prices above the federal 75-cent minimum. I see where New England now can't pay it, and I'm afraid that Puerto Rico may become like New England where you have the government agents, the labor unions, the welfare people all interested in improving standards, and who can say they are against improving standards? If you do, you stand out like a sore thumb, like a man who is against progress, a man who is against health, a man who is against child welfare. Who can be against that sort of thing? So if you sit back silently, you get into a position where the kind of logic

that seems to flow from those who want to improve the conditions seems irrefutable at times, and everybody yields to it, government agencies and so and so. Then you get a situation where both the labor unions and the city management and everybody—all the New England textile towns that I know about are trying to reduce the wages after they have left. As far as I see, as far as ocean pearl in Puerto Rico is concerned, there will be little consolation to the employees and to the management that is going to lose some capital if it ultimately is driven out from Puerto Rico. So far as Manati is con-

679 cerned, let me say to you gentlemen, if I was sitting where you are and heard all the threats about moving out, all leaving because of the minimum wage, I would take it with sixteen grains of salt. I am not going to make that kind of statement here. But I am going to say that if we go out we will go out quietly, and we won't make any fanfare about it; nobody is going to know anything about it. But we are not going to last long under this setup, and there is a simple reason for it.

We have a plant that only does cutting, but it is fully equipped with a complete staff of supervisors, all the supervisors you need to run a complete factory, one of the largest in the industry, to make a complete finished button. Now we duplicate that whole managerial setup in Federalsburg, Maryland where we do finishing of some of these buttons and cutting of some of them. We never contemplated that kind of operation. We didn't contemplate two factories with two overheads manufacturing the same product. In my opinion, unless Manati can expand to do finishing in Puerto Rico, it's operations there must end, must end. Now, the reason they didn't expand to do finishing is because the pressure of the wage rate and the general business conditions—the 54-cent minimum is only going to exaggerate that condition; it's only going to inflame the situation.

MR. JUDGE: Does the company ever intend to do

finishing in Puerto Rico? There was testimony by Mr. Rothchild in the hearing in 1949 that it was in a position to operate a cutting plant separately.

MR. FELDMAN: I don't know what statement you have of Mr. Rothchild. He is dead now, unfortunately.

I can only say to you now that the president of 680 the company—here sits Mr. Martin, Senior (indicating), and I think I would like to have him tell you about the economics of running two widely separated organizations, fully supervised—do a split operation where the same factory overhead, factory burden, could have been imposed upon the single joint operation.

Now, that's the story, gentlemen. We would have finishing today, and there was finishing as you know; there has been finishing going on at a moderate rate in Puerto Rico all this time; you know that, don't you?

MR. JUDGE: Yes.

MR. FELDMAN: Therefore, if Mr. Rothchild said that, it was only for cutting, he is mistaken; they have finishing machines there. If they could profitably finish buttons in Puerto Rico, it would be the height of folly to ship those buttons over and finish them here. What they had hoped to do in Puerto Rico was make their low-priced, 18 to 20 line buttons in Puerto Rico and do the finer buttons, the larger buttons in Federalsburg. They found out at this point that it didn't pay, maintaining two complete supervisory heads. You must remember that on the island, in Puerto Rico, your managers, your supervisors, represent a complete staff because he has to be in full charge of that corporation. He has to be in charge of all labor relations, all connections with the government, all accounting, corporate problems and all the local problems of a plant. The same setup exists with respect to Federalsburg, Maryland.

Mr. Martin and I were talking last night about the future of the Manati setup, and Mr. Rifkin who is President

of Excelsior, his long range view was that he is
681 going to be in the plastic button business, and this
may be—we may be talking about a dead duck; I
don't know—but one thing is certain, you will kill it
that much faster and wring its neck by pushing it up to
a point where it is going to have to make a decision earlier
about getting out of the business.

PRESIDING OFFICER PARKINSON: Let me see
where we are here for a moment. What was your name?

MR. FICKETT: W. P. Fickett. I am President of
the National Association of Button Manufacturers.

PRESIDING OFFICER PARKINSON: How much
time did you want?

MR. FICKETT: About two minutes, but I've been
waiting patiently for our friend—

PRESIDING OFFICER PARKINSON: That is all
right; he has proceeded at my suggestion. Let's hear
from you now. Is there anyone else to hear from?

(No response.)

MR. FICKETT: I take it then, Mr. Examiner, that
all the opposition is in to the 54-cent rate?

PRESIDING OFFICER PARKINSON: Yes. I don't
know whether the case is complete or not.

MR. FELDMAN: We kept the record open for certain
exhibits.

MR. FICKETT: I appeared at the hearing in Puerto
Rico in June as a representative of the National Asso-
ciation of Button Manufacturers which in turn is com-
posed of manufacturers of fresh water pearl buttons.
Mr. William Speith accompanied me, and for the sake of
the record—to get it straight—Mr. Speith was authorized
by the Association to go with me to the hearing
682 and to represent the association and not the but-
ton company. The reason he referred to the Mc-
Kee Button Company from time to time in his testimony
was because there was certain prices or other information
which he knew of his own company, but he didn't know

about the other companies. Our position is this that we are not opposed to a 54-cent minimum, and we feel that the evidence we gave perhaps warranted a higher rate than that, but however, the 54 cents is a step in the right direction, and therefore we have no opposition. But we do want to say this that we will continue to watch the situation, and if new evidence develops, new developments come along, we shall feel free to ask the Administrator to again review the situation. Now, with that I will file this statement in the record.

PRESIDING OFFICER PARKINSON: Do you have copies of it, Mr. Fickett? I understood you wanted to get away and that is why I heard you at this point. Some of these people feel like they are not through here yet. I didn't want you to stay beyond the hour if you didn't want to.

MR. FICKETT: There is another question I would like to clear up for the sake of the record here which Mr. Feldman has raised and that relates to the statements I believe you said Mr. Speith and I made at the hearing regarding the production of ocean pearl buttons by fresh water manufacturers; do you recall that?

MR. FELDMAN: Yes.

MR. FICKETT: Mr. Speith said and I said we knew of only one company that made both fresh water and ocean pearl; that is correct. Now, according to the analysis of the companies that you submitted here, 683 the Automatic Company and the Hawkeye Company, I believe, are reported as having made some ocean pearl buttons.

MR. FELDMAN: About four, five or six.

MR. FICKETT: I beg your pardon. I think it was Automatic and Hawkeye.

MR. FELDMAN: And McKee.

MR. FICKETT: I am coming to that. It may be that they make a few, but if you look at this tabulation of production of ocean pearl buttons, you will see that it

is almost infinitesimal compared to the total production; it is very small, and they certainly are not factors in the industry as ocean pearl people.

Now, as regards to the McKee Company, Mr. Albert McKee who is now dead, in 1945 thought that he wanted to go into the ocean pearl business, and he bought quite a sizeable quantity of ocean pearl shells and shipped them out to the Middlewest somewhere where he set up a factory, and he undertook to make the ocean pearl buttons, but it didn't work out very satisfactorily. Upon his death the company then decided to liquidate the shells they had, the blanks they had, the buttons they had, and so far as I know they are out of it today. I just wanted to say that for the sake of the record.

MR. FELDMAN: I had nothing more than the two records to go by, the record at the hearing which seemed to make a severe limitation on the operation of pearl buttons by the fresh water people, and the apparent contradictory statements that came out from some of these reports.

684 MR. FICKETT: I wanted to clear that up because you notice your analysis does not state the quantity of ocean pearl buttons that those companies make.

MR. FELDMAN: They also make plastics.

MR. FICKETT: Automatic makes them, and I believe Hawkeye makes them, and I know McKee makes them; that is correct. That is all I have, Mr. Examiner.

PRESIDING OFFICER PARKINSON: Mr. Judge, I believe you were cross examining Mr. Craft?

MR. JUDGE: Mr. Feldman stated he had statements for Excelsior Pearl Works.

MR. FELDMAN: I haven't got them, but I think I can obtain them, and I want to show I am going to make an effort to get them because we have worked on the theory of full and complete disclosure of financial data by aiding the Administrator even though it apparently

appeared it works against our interests to do so. We will continue that policy. We never got an answer—the answers we got up to now on similar data regarding the other persons who came here and claimed unfair competition, and I repeat again, Mr. Hearing Officer, Mr. Judge is the man who denied me the right to know even the names of companies, and from me wants and I am going to get it for him, data with respect to everything connected with that request. If we could only pursue the same diligence with respect to the other side, I think the Administrator would get a better picture of the potential effect of this order on the employment in Puerto Rico, an obligation which he has as strongly to comply with as he has to deal with the question of competition with mainland manufacturers. I think you
685 cannot separate the responsibility of the Administrator and his staff by saying that he should only move in one direction. You cannot negate or overlook the Congressional directive to the Administrator with regard to protection of the Puerto Rican industry. So I am going to ask you a question, Mr. Judge, if I may, with the permission of the Hearing Officer; are you pursuing similar inquiries and making them with regard to these other companies that appeared?

MR. JUDGE: Mr. Feldman, we haven't subpoenaed that information from anyone.

MR. FELDMAN: I didn't say subpoena. You requested detailed information from me for many years back. Will you make a similar request upon the main companies that I will give you?

MR. JUDGE: The request was made of Mr. Speith, and I think also of Mr. Fickett at the hearing. We did not get it.

MR. FELDMAN: I want the record to so show that similar requests were made to Excelsior that were made to Mr. Fickett and Mr. Speith regarding the current and previous years financial reports of the companies they

represented. It was not delivered. I will deliver for Excelsior, and it will be in the same confidential form as you have protected the mainland firms that you testified to earlier, since you apparently confer that degree of confidentiality.

MR. JUDGE: To the financial statements that you submitted.

MR. GLASER: In connection with that, would you have any objection to making public if necessary the conclusions shown?

MR. FELDMAN: No. Here's the point—let's
686 get down to brass tacks. You haven't got it; you've made a request, and you haven't received the others. We have given you everything you have asked for up to now; is that correct?

MR. JUDGE: Yes.

MR. FELDMAN: Let the record indicate that Mr. Judge answered in the affirmative.

MR. JUDGE: You haven't given us this paper yet—

MR. FELDMAN: You just asked for it. Anything you have asked for up to now you have gotten. I will give you the records for Excelsior for four or five years, as many as are available from 1951 back. I do not wish it to be published, and I want it to be held in strict confidence, no summary made of it, but I do want the Administrator to have it.

MR. JUDGE: If we do it, Mr. Feldman, as we did the others, giving the information but not the identity of the company—

MR. FELDMAN: Exerybody knows who it is now.

I must say at this point that I will take the question up with the principals. If I can get the information from them without any strings attached to it, I will so inform you. If I get it with strings attached to it, in the way of confidentiality, I will also inform you. From that point on you will have to act on your own judgment as to

whether you wish to confer that degree or maybe I can give it to you without any question.

MR. FICKETT: Mr. Examiner, may I ask Mr. Judge a question. Did you say you asked Mr. Speith and me at the hearing in Puerto Rico?

MR. JUDGE: I didn't say that I personally did.

MR. FICKETT: But the committee did?

687 MR. JUDGE: I think the question was directed to you.

MR. OETTING: Mr. Wirtz asked for such information very specifically and very pointedly indicated he couldn't reach a conclusion without it.

MR. JUDGE: You were asked about production costs and profit and loss and you were not able to offer that.

MR. FICKETT: I will certainly look that up.

(Discussion off the record)

STATEMENT OF W. P. FICKETT, PESIDENT, NATIONAL ASSOCIATION OF BUTTON MANUFACTURERS, NEW YORK CITY, AT HEARING CALLED BY ADMINISTRATOR, WAGE AND HOUR DIVISION, U.S. DEPARTMENT OF LABOR TO CONSIDER SPECIAL INDUSTRY COMMITTEE NO. 12 FOR PUERTO RICO RECOMMENDATION OF A MINIMUM WAGE OF 54 CENTS APPLICABLE TO THE PEARL BUTTON AND BUCKLE DIVISION OF THE BUTTON, BUCKLE AND JEWELRY INDUSTRY IN PUERTO RICO.

The National Association of Button Manufacturers, which is composed of manufacturers of fresh water pearl buttons made from fresh water mussel shells, desires to present its views on the recommendation of Special Industry Committee No. 12 for Puerto Rico for a 54¢ minimum hourly wage to be paid workers in the pearl button and buckle manufacturing industry in Puerto Rico.

This Association was represented at the hearings before the Committee in San Juan, P. R., on June 24-25,

1952, and it informed the Committee of its views as to why the minimum wage for manufacturing pearl buttons in Puerto Rico should be 75¢ per hour, in accordance with the minimum wage applying to the industry on the mainland.

Supplementing this statement on behalf of the Association, our representatives testified at considerable length in answer to questions from Committee
688 members and others concerning the need for a 75¢ minimum wage, in order that the Puerto Rican industry would not enjoy an advantage over the industry on the mainland in competitive market conditions, and at the same time not cause unemployment in Puerto Rico. All of this information appears in the transcript of the hearings held in San Juan on the dates indicated.

We believe that the information submitted on behalf of our Association at this hearing substantiated our belief that a 75¢ minimum should be established. However, the Committee voted unanimously to recommend a 54¢ minimum. This represents an increase of 8¢ over the present minimum of 46¢ and while the proposed increase is a step forward, we feel that the Committee should have recommended a higher minimum.

We do not have any further evidence on this question to submit at this time, beyond the statements made by our representatives at the Committee hearing. Approval of the proposed 54¢ minimum would afford some relief to the domestic industry and this we are glad to have. A differential of 21¢ per hour in the minimum wage will still exist between the Puerto Rican and mainland pearl button industry, and if future developments are such that we feel that the minimum wage question should again be reviewed by a Special Industry Committee for Puerto

Rico, we will request you to take action accordingly.
689 PRESIDING OFFICER PARKINSON: Is there anything further here tonight?

MR. GLASER: I would like to ask one question. Mr.

Feldman, is there anyone present who could give us some information in connection with the financial statement filed by Red Star Button Company of New York for the year 1951, which appears as table 6 in the economic report, Administrator's Exhibit 4?

I am interested in the figures shown for selling and administrative expenses, \$108,000.

MR. FELDMAN: You consider that figure excessive?

MR. GLASER: No.

MR. FELDMAN: What is the purpose—do you want it broken down; is that it?

MR. GLASER: Could you give us a breakdown?

MR. FELDMAN: I couldn't really give it here tonight. That would require a breakdown of selling expenses, commissions, travel, rate of commission, who got it, and so on. On the volume of the business of that sort, however, it doesn't seem excessive to me. The federal government has something about expenses that you can deduct which is subject to a very keen supervision.

MR. AMBRISTER: Is this information submitted on income tax—

MR. FELDMAN: Sure, that's the regular return; that's a profit and loss statement.

MR. AMBRISTER: Could we ask that you get a breakdown of that, if it wouldn't be too much trouble?

MR. FELDMAN: I would have to inquire for 690 you.

MR. JUDGE: Mr. Fickett, with regard to your question, it appears on page 80.

MR. FICKETT: Apparently Mr. Vick asked for the information. We said we didn't have it, couldn't supply it because we didn't have it with us. Later, Mr. Wirtz, I think, got into the conversation and wanted to know how the committee could operate without having that information, and then I went on and told them we did have specific costs on specific operations, if I remember right, and we gave them those figures. I think that is right.

PRESIDING OFFICER PARKINSON: I am about to close the hearing. Is there any reason why that should not be done?

(Discussion off the record)

PRESIDING OFFICER PARKINSON: Mr. Feldman, I understand that you want to file a brief?

MR. FELDMAN: That's right.

PRESIDING OFFICER PARKINSON: Tell me how much time you want from the receipt of the official transcript of these proceedings?

MR. FELDMAN: I would need at least 30 days.

PRESIDING OFFICER PARKINSON: That's not unreasonable; permission granted.

MR. FICKETT: I would like to reserve the right to do that also.

PRESIDING OFFICER PARKINSON: Is there anything further?

MR. FELDMAN: May I have your rules and regulations regarding size of brief, type and so forth? I haven't seen them for a long time.

691 MR. GLASER: There is no set requirements.

MR. FELDMAN: You just take it typewritten or mimeographed; you don't require printing?

PRESIDING OFFICER PARKINSON: It should be in quadruple, I understand.

MR. GLASER: On the number of copies, yes.

PRESIDING OFFICER PARKINSON: Let the record show that all the exhibits were left with the reporter, and he will deliver them to me as soon as he is finished with them.

If there is nothing further, we are adjourned.

(Whereupon at 5 P.M., October 7, 1952, the hearing was adjourned.)

Administrator's Exhibit No. 5

Table 2. Shipments of Finished and Unfinished Ocean Pearl or Shell Buttons from Puerto Rico to the United States, January - July 1951, and January - July, 1952

Year and month	<i>Finished ocean pearl or shell buttons</i>			<i>Unfinished ocean pearl or shell buttons</i>		
	<i>Quantity Gross</i>	<i>Value Dollars</i>	<i>Average value per gross</i>	<i>Quantity Pounds</i>	<i>Value Dollars</i>	<i>Average value per pound</i>
1951 (7 months total)	608,239	\$806,717	\$1.33	85,161	\$166,361	\$1.95
January	100,107	111,882	1.12	7,002	14,342	2.05
February	75,099	99,655	1.32	11,807	22,719	1.92
March	142,010	188,990	1.33	22,734	41,717	1.84
April	85,020	118,377	1.39	9,038	17,694	1.96
May	84,723	144,505	1.70	13,718	31,667	2.31
June	88,940	108,203	1.22	10,111	18,968	1.88
July	32,340	35,105	1.08	10,751	19,254	1.79
1952 (7 months total)	485,803	682,407	1.41	125,307	233,220	1.86
January	37,847	58,853	1.55	4,797	9,182	1.91
February	102,502	146,320	1.43	25,729	42,566	1.65
March	73,883	107,155	1.45	33,004	60,274	1.83
April	71,699	95,309	1.33	15,742	30,108	1.91
May	97,465	139,422	1.43	17,635	33,813	1.92
June	60,543	83,563	1.38	16,290	31,457	1.93
July	41,864	51,785	1.24	12,110	25,820	2.13

Source: U. S. Department of Commerce, Bureau of the Census, Foreign Trade Reports, *Shipment of Merchandise from Puerto Rico to the United States*, January-July 1951, January-July 1952.

* * * *

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ECONOMIC DEVELOPMENT ADMINISTRATION
SAN JUAN, PUERTO RICO

Air Mail

December 12, 1952

Honorable William R. McComb, Administrator
Wage and Hour Division
Department of Labor
Washington 25, D. C.

Dear Mr. McComb:

Representatives of the Puerto Rican pearl button industry have approached us in regard to the minimum wages which Committee No. 12 has recommended for the industry. They contend that the Committee's recommendation was largely based on allegedly misleading statements in the economic report prepared by the Wage and Hour and Public Contracts Division, and claim that an acceptance of the recommended rate of 54 cents would intensify the declining trend which their industry has experienced lately. In view of the more than 400 jobs which the industry provides at the present time, and the \$300,000 which it dispenses annually to its workers, I am greatly concerned lest an unreasonable wage development deteriorate the lot of the employees of the pearl button industry.

An analysis of the records of the minimum wage proceedings has impressed me because of the incompleteness of the facts on which the Committee based its recommendation. Data indicating the overall cost structure of typical mainland producers of pearl buttons were lacking so that the Committee could not possibly determine the degree to which Puerto Rican manufacturers do or do not enjoy a competitive advantage. The Committee was not

supplied with financial statements of mainland producers and did not know what is being considered an adequate return on the capital in the ocean pearl industry. Without knowing which minimum wage level would enable the Puerto Rican industry to earn at least this normal profit, it had no way of telling whether its recommendation would discourage further operations in Puerto Rico.

While data concerning operations of mainland plants were missing, evidence was presented to the Committee indicating *prima facie* that Puerto Rican firms had either been unable to earn an adequate return on their investment, or had suffered losses. Sworn statements showed that the recommended minimum wage would eliminate profits entirely and would compel the Puerto Rican companies to discontinue operations on the Island or at least to dismiss their marginal workers. Both reactions would, in violation of the statute, decrease employment in the industry.

The limited facts and the conflicting evidence presented at the hearings in Puerto Rico and Washington make it appear doubtful that the recommended minimum wage satisfies the conditions set by the Fair Labor Standards Act. I would therefore recommend that another Committee be charged with a more thorough investigation of the Puerto Rican pearl button industry and its ability to pay higher wage rates. I would strongly urge that the Wage and Hour Division make an attempt to obtain detailed production costs and financial statements of mainland pearl button plants on which the new Committee may then base its recommendations.

Sincerely yours,

/s/

Teodoro Moscoso
Administrator

747 UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

*In The Matter of the Recommendations of Special Industry
Committee No. 12 For Puerto Rico For Minimum
Wage Rates In the Button, Buckle, and Jewelry In-
dustry In Puerto Rico*

FINDINGS AND OPINION OF THE
ADMINISTRATOR ¹

This is a proceeding, pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938, as amended (63 Stat. 911, 915; 29 U.S.C. 205, 208), (hereinafter called the Act) to determine whether the minimum wage recommendations of Special Industry Committee No. 12 for Puerto Rico (hereinafter called the Committee) for the Button, Buckle, and Jewelry Industry in Puerto Rico (hereinafter called the "Industry") shall be approved and carried into effect.

* * * *

752 C. *Recommendation made in accordance with
law*

The Committee, having due regard to economic and competitive conditions, determined that the minimum wage-rates recommended are the highest rates (not in excess of 75 cents an hour) which will not substantially

¹ For the benefit of the reader, footnotes in the opinion make reference to certain relevant portions of the record. These findings are based, however, upon the entire record and are not based solely upon the portions cited or referred to. The transcript of the public hearing before Special Industry Committee No. 12 for Puerto Rico with reference to the Button, Buckle, and Jewelry Industry in Puerto Rico is cited by the letter "R". The transcript of the original public hearing on the Committee's recommendations is cited by the letter "T", and the transcript of the reopened hearing held on March 10, 1953, is cited by the letter "O".

curtail employment in the Industry, and will not give it a competitive advantage over any industry in the United States outside of Puerto Rico.¹⁹

Information concerning average hourly earnings and other economic data pertinent to the Industry was furnished to the Committee for study in an exhibit prepared by the Branch of Minimum Wages and Home Work of the Wage and Hour and Public Contracts Divisions, United States Department of Labor.²⁰ Testimony concerning conditions in the Industry and pertinent data were presented by employer and employee representatives.²¹

753 Upon the evidence in the record I find that the Committee considered conditions in the Industry, including the factors required by sections 5 and 8 of the Act, and that its recommendations were made in accordance with law.

II. *EFFECT OF THE RECOMMENDED MINIMUM WAGE RATES ON EMPLOYMENT IN THE INDUSTRY IN PUERTO RICO AND ON INDUSTRIES IN THE UNITED STATES OUTSIDE OF PUERTO RICO*

A. *Primary considerations*

The policy of the Act, as expressed in section 8(a) thereof, is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of a minimum wage rate of 75 cents an hour in each industry engaged in commerce or in the production of goods for commerce in Puerto Rico and the Virgin Islands.

¹⁹ Administrator's Exhibit No. 2.

²⁰ Administrator's Exhibit No. 4.

²¹ Administrator's Exhibit No. 3.

Pursuant to section 8(b) of the Act, the Committee recommended to me the highest minimum hourly wage rates (not in excess of 75 cents an hour) which it determined, having due regard to economic and competitive conditions, would not substantially curtail employment in the Industry and would not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico.

I am required by section 8(d) of the Act to take into consideration the same factors as are required to be considered by the industry committee and to determine whether the evidence on these factors adduced at the hearing before Hearing Examiner Parkinson supports the Committee's recommendations. If it does, I am required to approve the recommended wage rates and to carry them into effect through the issuance and publication of an appropriate wage order. If the evidence does not support the recommendations I am required to disapprove them and refer the matter back to the Committee or to a new Committee for further consideration and recommendation.

B. Economic and Competitive Factors

The Button, Buckle, and Jewelry Industry in Puerto Rico, as defined, contains approximately 15 companies. The Committee divided the industry into eight separate divisions for the purpose of fixing minimum wage rates.²²

1. There are three companies presently in the Pearl Button and Buckle Division. The Red Star Manufacturing Company, Inc., began operations in 1923 and the Porto Rican American Button Company in 1935. The other firm in this division, Manati Pearl Works, Inc., started operating in Puerto Rico in 1948.²³ Manati pro

²² Administrator's Exhibit No. 2, pp. 3-4.

²³ Administrator's Exhibit No. 4. p. 2.

duces chiefly button "blanks" which are subsequently shipped to a mainland affiliate for finishing. The other two companies not only cut blanks but also perform finishing and polishing operations on the Island.²⁴ The firms utilize, in general, the same type of equipment and methods of production as mainland button manufacturers and are almost completely dependent upon the mainland for their market.²⁵

754 Shipments of finished ocean pearl and shell buttons to the mainland amounted to 864,514 gross in 1946 and were approximately the same in 1947. In 1948 such shipments declined to 745,563 gross but increased the following year to approximately the 1946-1947 level. In 1950 shipments of finished ocean pearl and shell buttons reached an all-time peak of 1,188,453 gross. Although shipments decreased to 968,571 gross in 1951, they still remained well above the pre-Korean level. During 1952, 869,065 gross of ocean pearl and shell buttons were shipped from Puerto Rico to the continental United States.²⁶

Shipments of unfinished ocean pearl and shell buttons increased from 4,500 pounds in 1946 to 36,639 pounds in 1947. After a drop during the following year to 23,312 pounds, shipments of unfinished ocean pearl and shell buttons increased to 124,367 pounds in 1949 and 293,966 pounds in 1950.²⁷ Shipments totalled 170,173 pounds in

²⁴ R. pp. 5-6.

²⁵ Administrator's Exhibit No. 4, p. 3; R. pp. 6, 77, 100.

²⁶ Administrator's Exhibit No. 4, Table 2, p. 5, as supplemented by more recent data on shipments obtained from the U. S. Department of Commerce, Bureau of the Census, Foreign Trade Report No. 573.

²⁷ The sharp increase in shipments of unfinished ocean pearl and shell buttons since 1949 is the result of the establishment of an additional plant on the Island, Manati Pearl Works, Inc., which concentrates on blank cutting.

1951 and 218,321 pounds in 1952.²⁸

The reduction in shipments of both finished and unfinished ocean pearl and shell buttons from the unusually high 1950 level was in line with the trend in the apparel industry generally and was not indicative of a worsened competitive position of Puerto Rican producers. On the contrary, the relative position of Puerto Rican producers in the ocean pearl button field has been steadily improving in recent years.²⁹ Moreover, despite the decline in volume, the value of Puerto Rican production has remained relatively stable for the last three years. Thus, the total value of shipments of finished and unfinished buttons amounted to \$1,707,609 in 1950; \$1,604,706 in 1951; and \$1,655,400 in 1952. Prior to 1950, the value of all shipments had never amounted to as much as \$1,000,000.³⁰

The value per gross of finished pearl buttons manufactured in Puerto Rico has substantially increased since 1950 when the average price was \$1.01. In 1951 the average price per gross was \$1.32 and the 1952 data indicates that the value has increased to approximately \$1.40 per gross.³¹ A part of this increase in average value resulted from the use of better grade shells in the manufacture of buttons.³²

²⁸ Administrator's Exhibit No. 4, Table 2, p. 5, as supplemented by the U. S. Department of Commerce, Bureau of the Census, Foreign Trade Report No. 573.

²⁹ Administrator's Exhibit No. 4, Table 3, p. 7; Administrator's Exhibit No. 5, Table 4.

³⁰ Administrator's Exhibit No. 4, Table 2, p. 5, as supplemented by other data received from the U. S. Department of Commerce, Bureau of the Census.

³¹ Ibid.

³² See Administrator's Exhibit No. 4, Table 1, p. 4.

The current minimum wage rate applicable under the Act for the Pearl Button and Buckle Division is 46 cents an hour. This minimum rate was recommended by Industry Committee No. 6 and was subsequently
755 approved by the Administrator and became effective August 21, 1950.³³

A wage survey conducted by the Wage and Hour Division during the period December 1951 and January 1952 showed that 148 of the 428 workers in this division received exactly the minimum rate of 46 cents an hour. The average straight time earnings of all the workers were 56.5 cents an hour. Based upon the survey, an increase to the recommended wage rate of 54 cents an hour would directly affect 59.5 percent of the workers in this division and cause a direct percentage increase in the wage bill of 6.8 percent.³⁴

Testimony presented before the Committee indicates that labor costs constitute about 29 percent of total costs.³⁵ Therefore, it is estimated that the direct increase in total costs resulting from the establishment of the recommended minimum would approximate two percent.

The effect of the increased minimum upon wages now above such minimum cannot be expected materially to affect the issues in this proceeding. Such wages may be expected to be affected more significantly by other factors, including the general business situation, the bargaining position of labor, and the attitude of management. Past experience has repeatedly indicated that firms do not maintain existing occupational differentials if the result of such voluntary action is a substantial curtailment of the level of employment.

³³ 29 CFR Part 697.

³⁴ Administrator's Exhibit No. 4, Table 28, p. 46.

³⁵ R. pp. 172, 290.

Therefore, on the basis of all the evidence, I find that the recommended increase in minimum wages can be borne by the companies in this division without substantially curtailing employment in the industry.

On the other hand, however, I find that the recommended minimum of 54 cents an hour is the highest rate which can be established at this time without substantially curtailing employment. There was testimony to the effect that although the industry enjoyed a very profitable period in 1950, the subsequent downward trend in the industry has adversely affected the profitability of the firms in Puerto Rico.³⁶ In addition, the industry is also confronted with competition in the mainland market from plastic buttons and imports of ocean pearl and shell buttons from the Philippine Republic and Japan.³⁷ In connection with the latter, buttons of pearl or shell imported from the Philippine Republic are subject under the Philippine Trade Act of 1946 to an absolute quota of 850,000 gross per year effective January 1946. The entire quota will be duty free until January 1955 when a progressively decreasing duty free quota within the absolute quota will come into effect.³⁸ Shipments from the Philippine Republic of ocean pearl and shell buttons amounted to 310,368 gross in the first six months of 1952 compared with 263,977 gross in the same period in 1951. Japanese imports of ocean pearl and shell buttons totalled 756 351,278 gross in the first six months of 1952 which represented approximately a 10 percent increase over shipments for the same period of 1951.³⁹ After con-

³⁶ See Red Star Manufacturing Co., Exhibit No. 2; Manati Pearl Works, Inc., Exhibit No. 1; Porto Rican American Button Company, Inc., Exhibit No. 1. All of these exhibits were introduced in the record at the hearings before the Committee.

³⁷ Administrator's Exhibit No. 4, pp. 18-19; R. pp. 10, 133-134, 170-171, 191, 192-193, 202, 256.

³⁸ Administrator's Exhibit No. 4, pp. 18-19; R. p. 10.

³⁹ Administrator's Exhibit No. 5, Table 5.

sidering all of the evidence, I am convinced that the fifty-four cent recommended rate is the highest minimum rate which can be established without substantially curtailing employment.

I am also convinced that the recommended rate will not give the Insular companies in this division a competitive advantage over any industry in the United States outside of Puerto Rico. The testimony showed that Insular firms because of their great distance from the raw material market are forced to carry large inventories with consequent high investment, insurance and other charges.⁴⁰ Furthermore, freight charges on raw materials and finished products are generally higher than on the mainland because of the apparently necessary practice of shipping by express.⁴¹ Although the Puerto Rican pearl button manufacturers compete with fresh water button manufacturers located on the mainland, the competition is largely restricted to the lower grades of pearl buttons.⁴² Mr. William P. Fickett, President of the National Association of Button Manufacturers, speaking for the mainland fresh water shell manufacturers, urged approval of the recommended rate.⁴³

* * * *

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III. CONCLUSION

Upon consideration of the entire record, I conclude that:

The definition of the Button, Buckle, and Jewelry Industry in Puerto Rico, as set forth in Administrative

⁴⁰ R. pp. 135-137, 257-258.

⁴¹ R. pp. 144, 217.

⁴² Administrator's Exhibit No. 4, p. 18.

⁴³ Op. 3.

Order No. 421, is appropriate and reasonable and
764 has been made with due regard to economic and
competitive conditions;

It is necessary and proper to divide the Industry into separable divisions for the purpose of fixing minimum wage rates. Each of the divisions of the Button, Buckle, and Jewelry Industry in Puerto Rico, as defined by the Committee, except the Necklace, Bracelet, and Similar Jewelry Division and the Metal and Plastic Jewelry and Miscellaneous Products Division, is a distinct division of the Industry, separable from the other divisions of the Industry, and constitutes, in itself, a distinct and separable Industry. The definition for each division recommended by the Committee with the exception of the Necklace, Bracelet, and Similar Jewelry Division and the Metal and Plastic Jewelry and Miscellaneous Products Division, is appropriate and reasonable and has been made with due regard to economic and competitive conditions;

Competitive conditions between each of the separable divisions of the Industry are such that the approval, disapproval, or subsequent cancellation of the rates recommended for any of such divisions will not give a competitive advantage to or substantially curtail employment in, any group in the Button, Buckle, and Jewelry Industry in Puerto Rico;

The minimum wage rates recommended by the Committee for the respective separable divisions of the Button, Buckle, and Jewelry Industry in Puerto Rico, with the exception of the Necklace, Bracelet, and Similar Division and the Metal and Plastic and Miscellaneous Products Division, are the highest which, having due regard to economic and competitive conditions, will not cause substantial curtailment of employment in the Industry as a whole or in the separable divisions thereof. Such rates

will not give a competitive advantage to the Button, Buckle, and Jewelry Industry in Puerto Rico or to any of its separable divisions over any industry in the United States outside of Puerto Rico; and that

In the light of the conditions specified in section 8(c) of the Act, it is not necessary that classifications be established within the Industry or within any of its separable divisions.

Upon reviewing all the evidence in this proceeding and giving consideration to the provisions of the Act, with special reference to sections 5 and 8, I conclude that with the exception of the Necklace, Bracelet, and Similar Jewelry Division and the Metal and Plastic Jewelry and Miscellaneous Products Division, the Committee's recommendations with respect to the Button, Buckle, and Jewelry Industry in Puerto Rico, and its separable divisions, as defined, are made in accordance with law, are supported by the evidence adduced at the hearings, and, taking into consideration the same factors as are required to be considered by the Committee, will carry out the purpose of sections 5 and 8 of the Act.

With respect to the recommendations of the Committee for the Necklace, Bracelet, and Similar Jewelry Division and the Metal and Plastic Jewelry and Miscellaneous Products Division, I conclude that the Committee's recommendations for these two divisions are not made in accordance with law, are not supported by the evidence adduced at the hearings, and, taking into consideration the same factors as are required to be considered by the Committee, will not carry out the purpose of sections 5 and 8 of the Act.

IV. NOTICES OF ORDER

Section 8(e) of the Act provides that wage orders issued under section 8

765 * * * shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

In order to carry out the purposes of the wage order to be issued herein and to prevent its circumvention and evasion, I deem it necessary to require that every employer employing any persons in commerce or in the production of goods for commerce in the Button, Buckle, and Jewelry Industry in Puerto Rico shall post and keep posted in a conspicuous place in each department of his establishment where such employees are working such notices of the order as shall be prescribed from time to time by the Wage and Hour Division, and that he shall give notice of the order to such employees in such other manner as the Wage and Hour Division may prescribe.

Signed at Washington, D. C.
this 9th day of April, 1953.

/s/ Wm. R. McComb
Wm. R. McComb, Administrator
Wage and Hour Division
United States Department of Labor

• • • •

782 UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

*Pearl Button and Buckle Division of the Button, Buckle
and Jewelry Industry In Puerto Rico*

WAGE ORDER

(Title 29, Chapter V, Code of Federal Regulations,
Part 697, 709)

IN THE MATTER OF THE RECOMMENDATION OF
SPECIAL INDUSTRY COMMITTEE NO. 12 FOR
PUERTO RICO FOR A MINIMUM WAGE RATE

Pursuant to the Administrative Procedure Act (60 Stat. 257; 5 U.S.C. 1001), notice was published in the Federal Register on April 14, 1953 (18 F.R. 2085-2087), of my decision to approve the recommendation of Special Industry Committee No. 12 for Puerto Rico for, inter alia, the Pearl Button and Buckle Division of the Button, Buckle and Jewelry Industry in Puerto Rico and the wage order which I proposed to issue to carry such recommendations into effect was published therewith.

As indicated in the notice, my findings and conclusions in this matter were set forth in a document entitled "Findings and Opinion of the Administrator in the Matter of the Recommendations of Special Industry Committee No. 12 for Minimum Wage Rates in the Button, Buckle and Jewelry Industry in Puerto Rico."

Interested parties were given an opportunity to file exceptions to the proposed sections within 20 days of the date of publication of the notice. This period was subsequently extended to May 18, 1953 with respect to the Committee's recommendation for the Pearl Button and Buckle Division of the Button, Buckle and Jewelry Industry in Puerto Rico (18 F.R. 2608-2609). Exceptions to the proposed action were filed by the Red Star Manufacturing

Company, Inc., and by the Manati Pearl Works, Inc.

783 These exceptions have been considered, but I find they present no new matter which would require modifications of the previous conclusions, as set forth in a document entitled "Findings and Opinion of the Administrator in the Matter of the Recommendations of Special Industry Committee No. 12 for Minimum Wage Rates in the Button, Buckle and Jewelry Industry in Puerto Rico."

Accordingly, pursuant to the authority under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201), the said decision is affirmed and made final, the recommendations of Special Industry Committee No. 12 for Puerto Rico for a minimum wage rate for the Pearl Button and Buckle Division of the Button, Buckle and Jewelry Industry in Puerto Rico is hereby approved, and the wage order contained in this part is hereby revised to read as set forth in the April 14, 1953, issue of the Federal Register (18 F.R. 2085-2087) and as set forth below, to become effective on the 14th day of September, 1953.

Signed at Washington, D. C.,
this 12th day of Aug., 1953.

/s/ F. Granville Grimes, Jr.
Acting Administrator
Wage and Hour Division
United States Department of Labor

BRIEF FOR PETITIONERS

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 11,949

RED STAR MANUFACTURING CO., INC.,
MANATI PEARL WORKS, INC.,

Petitioners,

v.

F. GRANVILLE GRIMES, JR., Acting Administrator,
Wage and Hour Division, United States Department
of Labor,

Respondent.

PETITION FOR REVIEW OF WAGE ORDER OF ACTING
ADMINISTRATOR OF WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR

ERWIN FELDMAN,
Attorney for Petitioners,
1350 Broadway,
New York, New York.

United States Court of Appeals
For the
District of Columbia Circuit

FILED APR 22 1954

Joseph W. Stewart
CLERK

Questions Presented

A. Whether the Wage and Hour Administrator's approval of Industry Advisory Committee's recommendation raising minimum from 46¢ per hour to 54¢ per hour for the Pearl Button and Buckle Division of the Button, Buckle Manufacturing and Jewelry Industry of Puerto Rico, was supported by substantial evidence.

B. Whether the Industry Advisory Committee and the Administrator erred in finding that the wage recommendation would not substantially curtail employment in the industry in Puerto Rico, or was necessary to remove any competitive advantage over the industry in the United States, as required by law.

C. Whether Industry Advisory Committee executed and performed its function in accordance with the law and the regulations thereunder.

D. Whether Hearing Officer appointed by the Administrator improperly denied Petitioner's right to make inquiry into the names of companies referred to in economic report, admitted in evidence.

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IN THE
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PETITION FOR REVIEW OF WAGE ORDER OF ACTING
ADMINISTRATOR OF WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR

BRIEF FOR PETITIONERS

Jurisdictional Statement

The jurisdiction of this case is conferred on this Honorable Court under Section 10 of Act of Congress known as the Fair Labor Standards Act of 1938, as amended (63 Stat. 911, 915; 29 U. S. Code 205, 208) hereinafter called the "Act."

Petition for Review (App. 2A*) was filed on the 8th day of September, 1953, in which the Petitioners herein

* References are to pages of the joint appendix.

seek to review and have set aside a certain wage order made on August 12, 1953 for the Pearl Button and Buckle Division of the Button, Buckle Manufacturing and Jewelry Industry of Puerto Rico by the Administrator of the Wage and Hour Division of the U. S. Department of Labor, which order became effective on September 14, 1953 (App. 220A). This order was published in the Federal Register on August 15, 1953, the said Wage Order having been issued pursuant to Section 8 of the Fair Labor Standards Act of 1938, as amended (63 Stat. 911, 915, 29 U. S. Code 205, 208).

Statement of Case

Petitioners, Red Star Manufacturing Co., Inc., of San Juan, Puerto Rico (hereinafter referred to as "Red Star"), and Manati Pearl Works, Inc., of Manati, Puerto Rico (hereinafter referred to as "Manati") are engaged in the business of manufacturing ocean pearl buttons in Puerto Rico. Red Star began business in 1923, and Manati in the early part of 1948. (See Economic Report filed as Administrator's Exhibit 1 introduced at public hearing, June 24-26, 1952 (App. 24A-60A).)

On the 8th day of May, 1952, the Wage and Hour Administrator of the United States Department of Labor (hereinafter referred to as "Administrator"), appointed an industry committee by Administrative Order # 421, dated May 8, 1952, as amended by Administrative Order # 422, dated June 3, 1952, and designated said Committee as Special Industry Committee # 12 for Puerto Rico (hereinafter called the "Committee"), for the Button, Buckle and Jewelry Industry in Puerto Rico, which Committee, in accordance with the provisions of the Act, was charged with the duty of investigating conditions in the Industry and recommending to the Administrator a mini-

imum wage rate. Public hearings began on June 24, 1952, in Puerto Rico and ran through July 1, 1952.

The Button, Buckle Manufacturing and Jewelry Industry of Puerto Rico was divided into various divisions, one of the divisions being the "Pearl Button and Buckle Division." Hearings were held separately for each division thereafter, and separate recommendations were made for each division. We are concerned here with the action taken on the "Pearl Button and Buckle Division" (which will be referred to hereinafter as the "Industry").

Following the hearing, the Committee recommended a 54¢ an hour minimum wage for all employees in the Industry, which constituted an increase of 8¢ per hour over the then prevailing minimum wage of 46¢ per hour (the 46¢ per hour minimum wage having been in effect since August 21, 1950).

On the 27th day of August, 1952, the Administrator gave notice of a hearing to be held "on recommendations of the Committee." Said hearing hereinafter referred to as "Administrator's hearing" was held on October 7, 1952. Because of its importance, transcript of hearing is printed in its entirety in the Joint Appendix (App. 70A-204A).

On April 9, 1953 the Administrator issued "Proposed Findings & Opinions" approving the recommendation of the Committee to which findings the petitioners took exceptions and urged disapproval of same.

On August 12, 1953, the Acting Administrator issued the minimum wage order, effective September 14, 1953, a review of which is sought here.

In June 1952, preliminary to the appointment of the Committee, the Division of Wage Determinations of the United States Department of Labor, Wage and Hour and

Public Contracts Division, prepared an economic report titled, "The Button, Buckle and Jewelry Industry in Puerto Rico". This was a mimeographed report of 59 pages, and was allegedly based upon economic studies made of various divisions of the whole industry, including the Pearl Button and Buckle Division. (Excerpts from the report dealing with the Pearl Button and Buckle Division are set forth in the joint appendix pages 24A to 60A.)

The economic report discloses that at the time the study was made in 1952, there were three companies engaged in manufacturing pearl buttons and blanks out of ocean pearl shell in Puerto Rico, namely "Red Star", "Manati", and the Porto-Rico American Button Co. The economic report describes the various types of ocean pearl shell manufactured by these companies. Tables are provided showing changes in the volume of production of buttons, and increases in quantity of shell delivered to the Island for use in the manufacturing of these buttons.

The testimony shows that "Red Star" began operations over 30 years ago, and in 1936-37, it employed over 600 persons (App. 156A). During that period there were 626 employees employed in the entire pearl button industry in Puerto Rico (App. 54A). Since that period, the total number of employees in this industry has steadily declined. This decline began soon after the introduction of minimum wages under the Fair Labor Standards Act (App. 156A). The peak employment figure of 626 for the whole Industry has never been reached, this notwithstanding the opening of "Manati", a new enterprise, which began operation in 1948, and employed over 200 persons.

In addition to the steady decline in employment, there has also been a decline in the number of hours worked each week by each employee.

The economic report contains this summary of the employment situation in the Industry:

"Employment

A survey made by the Wage and Hour Division in January 1952, indicated a total of 428 employees engaged in the manufacture of ocean pearl buttons in Puerto Rico. The same number of workers were employed in this industry in November 1949, when it was considered by Special Industry Committee No. 6" (App. 34A).

The economic report provides statistical data concerning the value and quantity of raw materials received on the island, which reads as follows:

"In the early post-war period, 1946-1948, more than 80 percent of shipments of unmanufactured shells from the mainland to Puerto Rico consisted of shells other than mother-of-pearl (Table 1). Since then, the value of shipments of shells to Puerto Rico has risen substantially, while the value of foreign imports of unmanufactured shells into the United States declined between 1947 and 1950, increasing again slightly in 1951. This would indicate that shipments to Puerto Rico since 1949 have consisted of a larger proportion of mother-of-pearl and other high grade shells than in the immediate post-war period" (App. 28A-29A).

No statement appears at this point that the rise in shell imports was occasioned by the opening of "Manati", employing almost 50% of the total presently employed in 1948.

The economic report makes comparisons in average hourly earnings between the three Island manufacturers and two unidentified mainland firms as follows:

"The two mainland firms employ 374 production workers whose average hourly earnings are \$1.19 as compared to average earnings of \$.56½ an hour received

by Puerto Rican workers. Comparative hourly wage rates for three principal occupations were reported as follows:

Occupation	Average hourly rate in three Puerto Rican firms	Average hourly rate in two mainland firms
Cutter	\$.62	\$1.41
Sorter	.47	.96½
Grinder	.52	.91"

(Econ. Rep., p. 9).

No names or locations of mainland firms are given, nor is there any comparison of work, quality of work, piece rates, or character of goods.

The Hearing Officer at the Administrator's Hearing held Oct. 7, 1952 before whom petitioners appeared and opposed the Committee's recommendations, denied petitioners the right to inquire into the names of the mainland firms whose data was used in the report, and sustained objections to questions attempting to elicit this information, to which rulings petitioners took exception (App. 39A).

We quote from the record (App. 130A):

"Q. Now, on table 4 on you give an analysis, 'Production Costs of two Puerto Rican and two Mainland Manufacturers—'. Could you tell us the name of the Puerto Rican firm 'A' that you use in that connection?"

After considerable colloquy, during which the witness refused to answer this question, the witness Judge stated as follows:

"Witness Judge: Some of these firms, Mr. Feldman, information was obtained on a confidential basis, so we are not at liberty to disclose the names of those companies" (App. 131A).

Subsequently, the Presiding Officer stated:

"Presiding Officer Parkinson: They have declined to answer, and I have declined to instruct them to answer.

"Mr. Feldman: I think that is an important right of the appearances that I represent here; their right is being violated.

"Presiding Officer Parkinson: All right, you have your record.

"Mr. Feldman: And you have my exception on the record.

"Presiding Officer Parkinson: All right, I have your exception; * * *" (App. 132A).

After the matter was reconsidered by the Presiding Officer, he again denied the motion to direct the witness to answer the question (App. 135A). The witnesses were again asked whether the same ruling would apply both to mainland firm "A" and mainland firm "B" referred to as manufacturers of ocean pearl buttons (App. 135A).

The record states as follows:

"Presiding Officer Parkinson: Just a minute. In order to get the record straight as far as my ruling is concerned, you still say that in face of what he has just said that I have the right or the duty, the responsibility in this hearing, to direct him to name that company?

"Mr. Feldman: No question about it.

"Presiding Officer Parkinson: And you move that I so direct?

"Mr. Feldman: I so do.

"Presiding Officer Parkinson: Your motion is denied.

"Mr. Feldman: I take exception, and I ask the same question that I put to this witness (indicating) on the stand.

"Presiding Officer Parkinson: Same ruling" (App. 135A).

In preparing the economic report, the representatives of the department stated that information concerning the unnamed companies was based on two questionnaires out of some six or seven sent out to firms whose names were supplied by a private individual representing the trade association of mainland pearl button manufacturers (Econ. Rep., pp. 76-81, App. 136A-142A).

The economic report contained, however, profit and loss statements of all three Puerto Rican manufacturers of ocean pearl buttons, together with current statements of the quantity, value and average value of all pearl buttons manufactured by the three Puerto Rican companies; complete statements regarding the affairs of "Red Star" and "Manati", and the third company, Porto-Rico American Button Co.; together with balance sheets, profit and loss statements, and other economic data, all obtained from the industry in Puerto Rico by the Department.

The economic report shows that for the calendar year ending December 31, 1951 (the period immediately preceding the Committee Hearing), two of the Puerto Rican manufacturers lost money, and one had made a net profit of \$3,946.95, on a total sales of \$848,619.04. We quote from the economic report in Red Star's income record:

"Income

Financial statements were submitted to the Wage and Hour Division by all Puerto Rican manufacturers. Red Star Manufacturing Company, Inc., reported a net profit before provision for income tax of \$13,573.55, and \$10,797.84 after taxes (Table 5). The net profit after taxes represents a 2.5 percent return on investment and a 1.7 percent (2.2 percent before taxes) return on net sales. Direct labor costs

composed 30 percent and administrative salaries 5.5 percent of the total cost of goods sold. In the same period the Red Star Button Company, Inc., of New York, which is the mainland purchasing and sales agent for the Island firm, earned a net profit of \$5,747.40 before provision for Federal Income Tax of \$1,800.45 (Table 6). The profit after taxes of \$3,946.95 amounted to a 6 percent return on the net worth. Wages and salaries paid accounted for 8 percent of the total cost of goods sold" (App. 39A-40A).

Profit and loss statements appear for all three companies: "Red Star" profit and loss statement (App. 40A-43A); "Manati" profit and loss statement (App. 44A); and Porto-Rican American Button Co., Inc., profit and loss statement (App. 47A).

Except for Mr. Judge, the Division's representative, who devoted most of his testimony to explaining the economic report, no evidence having any probative value was introduced. Two representatives of mainland firms who appeared did not offer any evidence in support of their claim that the producers in Puerto Rico were unfairly competitive with mainland producers. One of them appeared in the capacity of a trade association representative. The other mentioned a name of his company but gave nothing to the Committee except a general statement regarding the use of ocean pearl buttons on men's shirts, and said something about a growth of general competition from plastic buttons which he stated affected both mainland and Island producers alike. Nothing was put into the record of any losses or low profits enjoyed by any of the mainland producers.

The Committee concluded its deliberations on the 1st day of July, 1952, and on the same day met and made its recommendation of 54¢ per hour.

On July 1, 1952 the same day that they met, two of the industry members, Messrs. W. Willard Wirtz and Fernando A. Villamil, resigned from the Committee and their resignations were accepted on July 2, 1952. Notwithstanding the fact that they were no longer members of the Committee, and thus had no official standing, they nevertheless executed the recommendation in the month of August, 1952 (App. 61A-70A).

On the 27th day of August, the Administrator gave notice that hearings would be held in Washington, D. C. and invited interested parties to appear for or against the recommendation of the Committee, in accordance with the regulations, and the petitioners herein appeared at this hearing.

A transcript of the testimony of all of the witnesses who appeared at this hearing is set forth in the joint appendix (p. 71A *et seq.*). The Court is invited to read the testimony of the witnesses Judge and Reif, who were in charge of preparation of the economic report. Mr. Hans Reif, economist of the Department, who was apparently directly in charge of the preparation of the economic report, stated that he had met with a trade association representative of mainland producers, and got up a questionnaire which was used to send out to mainland producers. In making up his report, he denied that the statements appearing therein were prejudicial and held the view that while the report may have omitted statements which would have clarified the picture, he nevertheless strongly held that the statements which appeared were accurate. He denied that the Committee could have drawn any improper inferences from the manner in which the report was prepared.

The petitioners' position at the hearing may be summarized in three broad parts:

A. The petitioners pointed out that the economic report

was worded in such a manner as to create the impressions that there was stability and progress and employment opportunities in the ocean pearl button manufacturing industry in Puerto Rico, even though there was a decline in employment, and a very unfavorable profit and loss picture.

B. That the recommended minimum wage of 54¢ would result in an increase in direct labor costs of approximately 29% as a result of not only the raising of the minimum, but the resulting increases in differentials above the minimum which have always followed under minimum wage raises.

C. That all the important mainland producers, according to current trade reports, were showing profits in their business as distinct from the break even and loss picture of the Puerto Rican manufacturers.

D. That governmental bureaus in Puerto Rico, by administrative action, have arrived at findings directly opposite to the findings by the Committee and the Administrator.

Subsequently, before the hearing was closed, the Presiding Hearing Officer received for the record the following communication dated December 12, 1952 from Teodore Moscoso, Administrator of the Economic Development Administration of Puerto Rico:

"December 12, 1952

Honorable William R. McComb, Administrator
Wage and Hour Division
Department of Labor
Washington 25, D. C.

Dear Mr. McComb:

Representatives of the Puerto Rican pearl button industry have approached us in regard to the mini-

imum wages which Committee No. 12 has recommended for the industry. They contend that the Committee's recommendation was largely based on allegedly misleading statements in the economic report prepared by the Wage and Hour and Public Contracts Division, and claim that an acceptance of the recommended rate of 54 cents would intensify the declining trend which their industry has experienced lately. In view of the more than 400 jobs which the industry provides at the present time, and the \$300,000 which it dispenses annually to its workers, I am greatly concerned lest an unreasonable wage development deteriorate the lot of the employees of the pearl button industry.

An analysis of the records of the minimum wage proceedings has impressed me because of the incompleteness of the facts on which the Committee based its recommendation. Data indicating the overall cost structure of typical mainland producers of pearl buttons were lacking so that the Committee could not possibly determine the degree to which Puerto Rican manufacturers do or do not enjoy a competitive advantage. The Committee was not supplied with financial statements of mainland producers and did not know what is being considered an adequate return on the capital in the ocean pearl industry. Without knowing which minimum wage level would enable the Puerto Rican industry to earn at least this normal profit, it had no way of telling whether its recommendation would discourage further operations in Puerto Rico.

While data concerning operations of mainland plants were missing, evidence was presented to the Committee indicating *prima facie* that Puerto Rican firms had either been unable to earn an adequate return on their investment, or had suffered losses. Sworn statements showed that the recommended minimum wage

would eliminate profits entirely and would compel the Puerto Rican companies to discontinue operations on the Island or at least to dismiss their marginal workers. Both reactions would, in violation of the statute, decrease employment in the industry.

The limited facts and the conflicting evidence presented at the hearings in Puerto Rico and Washington make it appear doubtful that the recommended minimum wage satisfies the conditions set by the Fair Labor Standards Act. I would therefore recommend that another Committee be charged with a more thorough investigation of the Puerto Rican pearl button industry and its ability to pay higher wage rates. I would strongly urge that the Wage and Hour Division make an attempt to obtain detailed production costs and financial statements of mainland pearl button plants on which the new Committee may then base its recommendation.

Sincerely yours,

TEODORO MOSCOSO
Administrator"

Because of the importance of this document, we have set forth the full text. Mr. Moscoso's position in the Government of Puerto Rico can be said to be equivalent to that of the Secretary of Commerce of the United States.

At the hearing before the Administrator, the petitioners also pointed out to the Administrator's Hearing Officer a strange contradiction in the official findings between two independent governmental agencies. It was pointed out by the Petitioners that tax exemption had been denied the ocean pearl button manufacturing industry in Puerto Rico by the Puerto Rican authorities on the ground that such grant could only be given to industries where there was a possibility of expansion of employment. Having found no possibility of expansion of employment, this Agency de-

nied tax exemption to the ocean pearl button manufacturers (App. 165A-172A). An exemption, however, had been granted to plastic button manufacturers (App. 165A-172A) who were considered by all, including the economists of the Department, the mainland producers, and the Island producers, to have taken away a large portion of the ocean pearl business.

On the 9th day of April, the Administrator made his Findings of Fact, and on August 12, 1953 ordered the recommendation of the Industry Committee approved, effective the 14th day of September, to which order this Petition to Review and Set Aside was filed by the Petitioners herein.

Statutes Applicable

Sections 5, 8a, b, c, and d, and Section 10(a) of the Fair Labor Standards Act of 1938, as amended (63 Stat. 911, 915; 29 U. S. C. 205, 208) read as follows:

"SEC. 5. (a) The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In deter-

mining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or

call upon the Administrator to furnish additional information to aid it in its deliberations."

"SEC. 8. (a) The policy of this Act with respect to industries in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed in paragraph (1) of section 6 (a) in each such industry. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce in any such industry or classifications therein.

(b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that prescribed in paragraph (1) of section 6 (a)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon

the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

SEC. 10. (a) Any person aggrieved by an order of the Administrator issued under section 8 may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by

the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347)."

Statement of Points

A. It was error on the part of the Industry Committee and the Administrator to find that the proposed minimum wage would not substantially curtail employment in the industry; the findings were unsupported by substantial evidence.

B. It was error on the part of the Hearing Officer appointed by the Administrator to deny Island manufacturers the right to inquire as to the source of economic data and particularly the names of the mainland firms used in the economic report.

C. It was error on the part of the Administrator to accept recommendation signed by members of the Industry Advisory Committee who had resigned as members at the time of execution of Industry Committee's Report.

Summary of Argument

POINT A

Section 10 (a), Fair Labor Standards Act of 1938, as amended, states that

"The review by the Court shall be limited to questions of law and findings of fact by the Administrator when supported by * * *"

and Section 8 (a), (b), and (c) states the policy of the Act in regard to wage orders in Puerto Rico. Section 8 (a) states the policy of the Act as

"To reach as rapidly as is economically feasible without substantially curtailing employment * * *."

Section 8 (b) imposes upon the Industry Advisory Committee the obligation of investigating conditions in the industry and recommending

"the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands."

Petitioners contend that on the entire record there was no substantial evidence in support of the Findings required to be made by the Committee and the Administrator under the Act.

POINT B

The direct interest of the Island manufacturers in the minimum wage hearing and the right conferred upon them by the statute and regulations to attend hearings and examine witnesses, conferred upon those participating in the hearing the right to examine all the material and data used by the Committee or the Administrator in reaching the conclusions and determinations required by law. The issue of mainland competition being important and prescribed as a point upon which the Administrator must inquire and make findings under Section 8 (c) (1), (2), (3), was of such importance that the denial to the petitioners of the right to inquire into the names and the locations of the companies merely identified by symbols whose figures, without more, were accepted as evidence, constituted reversible error on the part of the Hearing Officer.

POINT C

The Industry Committee's recommendation, after its approval by the Administrator, becomes an administrative act, equal in importance to any criminal statute in the United States, and its provisions are enforceable by fine and imprisonment. It was error for the Administrator to accept the resignations in July of 1952 of two Industry Advisory Committee members, and thus render them "functus officio," and subsequently permit them to execute in August of 1952 a report as members of the Committee. The argument that signatures of a majority of the members would be sufficient to adopt a recommendation by the Committee can have no weight where it is shown that the question is not on whether a majority voted, but whether the document was executed by those authorized to execute it by law.

ARGUMENT

POINT A

No substantial evidence to support findings of Industry Advisory Committee and Administrator.

A reading of the entire record, which includes proceedings before the Industry Advisory Committee, the Hearing Officer, and Administrator, and all exhibits filed by the parties, can lead to but simple conclusions regarding the state of the ocean pearl button industry in Puerto Rico. The hearings which began in 1952 found the three producers in a low economic state. Two companies were losing money. The other had earned 2.5% return on investment and a 1.7% return on net sales. Employment which at one time was over 600 persons, declined to a little over 400 employees in 1952. This figure included employees of a new company which began operations in 1948 and employed 200 alone. Had "Manati" not opened, or had it closed its doors in view of its loss picture, there would only be some 200 employees in Puerto Rico from a peak of 600 in 1936-37.

The 400 odd employees presently working are employed on a curtailed work week at hours of employment which would be substantially reduced if employees were guaranteed a minimum 40 hours of work per week. The Administrator of the Economic Development Administration of Puerto Rico informed the Administrator that conditions were bad, and urged reconsideration of the action taken by the Industry Advisory Committee; and the tax authorities of Puerto Rico found that the industry failed to qualify for tax exemption because there did not appear to be any opportunity for expansion.

The only probative evidence in the record showed that the mainland producers were all in good shape and making money, as evidenced by the "Dun and Bradstreet" reports which were offered in evidence (App. 171A-178A).

In the light of these facts, it would be important for the Court to study the Findings and Opinion of the Administrator, which ultimately resulted in the approval of the Industry Committee's recommendation. These Findings and Opinion are set forth in the appendix, pp. 208A-218A.

We shall dismiss from consideration the general statements of findings which were made by the Administrator, and go into his discussion of the economic and competitive factors involving the industry. Commencing on p. 210A, the Administrator, under the heading "Economic and Competitive Factors", repeats statements taken again from the economic report, which deal mainly with the quantities of ocean pearl and shell buttons shipped to the mainland and increases in these shipments. In a footnote, he adds that the sharp increases in some of these economic transactions was undoubtedly due to the opening of the Manati plant in 1949 (App. 211A).

After showing that there had been increases and subsequent decreases in these shipments, he explains the decreases in the Puerto Rican picture, in 1950, as being

"in line with the trend in the apparel industry generally and was not indicative of a worsened competitive position of the Puerto Rican producers".

Indeed, he finds a certain stability to have taken place even in 1952. This despite the fact that the companies were losing money, and one was earning a nominal sum of money on a large volume of business and large capital investment.

Why the Administrator failed to comment in any part of this study of economic and competitive factors on the

profit and loss picture is not clear. It would seem that this picture would best reflect the ability of the industry to absorb labor cost increases which would weigh heavily in considering the question of subsequent curtailment of employment opportunities.

In considering the effect of the increase in total labor costs, the Administrator improperly computes the projected direct increases in total costs resulting from the establishment of the recommended minimum. At the hearing before the Administrator, industry representatives pointed out that in previous minimum increases the effect of each increase resulted in substantial increase in wages of employees, paid above the minimum. Ignoring the contradicted statements of industry and without any support in the record, the Administrator declares that the average earning of all straight time workers was found to be 56.5¢ an hour in January of 1952 (App. 213A), that an increase to the recommended wage of 54¢ an hour would directly affect 59.5% of the workers in this division. This, he concludes, would cause a direct percentage increase in the wage bill of only 6.8%. On the theory that 29% of the total costs constituted direct labor costs, he finds that establishment of the recommended minimum would approximate only a 2% increase.

These are not findings of facts but distortions of facts. There is nothing in the record to support this conclusion. The record, on the contrary, shows exactly how much the proposed increases would cost the two petitioners. In one instance, the total increases would wipe out a small profit and create a huge loss, and in the other instance increase the losses to the other company substantially. In no instance would the recommended minimum amount to a mere 2% cost increase, as found by the Administrator.

On page 14 of his Findings (App. 213A), after minimizing the effect of the proposed minimum wage, in anti-

cipation that he might have overstated his case, he goes on to add:

"The effect of the increased minimum upon wages now above such minimum cannot be expected materially to affect the issues in this proceeding. Such wages may be expected to be affected more significantly by other factors, including general business situation, the bargaining position of labor and the attitude of management."

If we understand the Administrator correctly, what he is saying is that the realistic effect of a minimum wage order is not important to the Administrator, and although the Congress specifically directs him to take into account economic factors, including possibility of substantial curtailment of employment, that he is not required to interest himself in such factors, as increases which flow indirectly from the imposition of a higher minimum wage.

If Congress intended to place all Puerto Rican industry on the same footing as far as minimum wages are concerned, with mainland manufacturers, it could have done so by removing the exception now existing in the law. Congress did not intend that the Administrator could raise the Puerto Rican minimums capriciously. He is required under the Act to take into account important designated factors, and he cannot discharge his duty by saying that even though economic conditions may be bad for many reasons, and opportunities for employment curtailed, that these conditions were due to outside causes.

The Court takes judicial notice of the fact that at the present time there are minimum wages under existing wage orders in Puerto Rico substantially under 45¢ an hour and many under 50¢ an hour. There were doubtless important reasons why these wages had not been raised to the high point recommended here. However, we know of no instance when, under the conditions such as exist in

the ocean pearl button industry, the Administration moved forward on minimum wages.

The facts in this case would seem to warrant the exercise of extreme caution in moving to increase minimum wages. One of the three companies has virtually ceased operations. At least such operations were not in existence at the time of the hearing in Washington or in Puerto Rico. Another company has shown a steady loss since it began operations in 1949. The third company's profit picture has been reduced to a point where any further increases in costs would result in placing it in the red column rather heavily.

It is apparent that the Administrator, in making his Findings, and in issuing the order appealed from here, has exceeded his authority under the Fair Labor Standards Act, and the Federal Administrative Procedures Act. Section 7C of the Federal Administrative Procedures Act, in dealing with the question of evidence, provides that no order may be issued except as supported by, and in accordance with "reliable, probative and substantial evidence". The phrase "substantial evidence" clearly refers to evidence which on the whole record complies with the requirements of Section 7C.

POINT B

Failure to permit cross examination at hearings and identification of firms referred to in Economic Report resulted in an incomplete and an unfair hearing, thus rendering the ultimate order illegal.

It is submitted that the failure of the Hearing Officer to require witnesses to give the names of firms referred to in the Economic Report as mainland firms "A" and "B" (which Economic Report was the most important

evidence relied upon by the Administrator), rendered the hearings incomplete and unfair to the petitioners. The petitioners having been refused a right of cross examination or investigation as to the names of the aforementioned firms, have been prejudiced.

Neither the Administrator nor the Committee are given such broad discretionary powers as to infringe upon the rights of the petitioners nor upon the limitations of the Act. The Supreme Court, in *Addison v. Holly Hill Fruit Products Inc.*, 322 U. S. 607, held that the Fair Labor Standards Act did not give the Administrator broad discretionary powers but was an Act which specifically circumscribed the authority of the Administrator.

In *Powhatan Mining Co. v. Ickes*, 118 Fed. (2d) 105, decided March 14, 1941, Circuit Judge Allen, in a case considering a point identical to that before this Court where the

“petitioners attack(ed) the admissibility in evidence of certain statistical data upon which they claim that the director relied in making his findings, and urge(d) that they were deprived of fundamental rights in not being permitted to cross-examine or offer exploratory evidence or rebuttal bearing on the weight properly to be accorded to these statistics” (p. 107),

the order of the Director of the Bituminous Coal Division of the United States Department of the Interior was reversed and the case remanded for rehearing.

There the Director admitted in evidence some twenty-five pages of tabulations, some of which gave comparative lists of prices on sales made by producers whose identities were not disclosed.

The Court, in considering the question of the refusal to disclose the identity to the companies stated, at page 108:

“ * * * we conclude that the data underlying tabulations of material filed pursuant to this section and compiled under the rules is not required to be kept secret upon an adversary hearing under the statute. Furthermore, we hold that in all fairness the data should have been disclosed.”

The Court continued, at p. 109:

“It is difficult to see how the accuracy, authenticity and relevancy of these tabulations could be tested in any way without the disclosure of the names of the code members who reported the data upon which the tabulations are based. The tabulations were compiled from data which was kept secret, but which was in the possession of the Division. Errors in computation could not be checked unless they appeared upon the face of the tabulation, and the real meaning of the figures could not be developed unless the character of the individual sales could be inquired into.”

The Court went on to state that

“But when the Division introduces the tabulations, the evidence is put in at its instance and the petitioners should be given the opportunity to cross-examine as to the weight and authenticity of the figures. It is true that administrative tribunals, including the Division, are not bound by the common-law rules of evidence, but the more liberal the practice in admitting testimony, the more imperative it is to preserve ‘the essential rules of evidence by which rights are asserted or defended.’ ”

Accord see

Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 93, 33 S. Ct., 185, 187;

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 229, 230, 59 S. Ct. 206.

The Court at page 109 states:

"The hearing must be full. *Morgan v. United States*, 298 U. S. 468, 56 S. Ct. 906. Full hearing includes the right to cross-examine."

The Court, at page 109, stated that,

"We are unable to see how there has been a full hearing unless the right to cross-examine has been afforded."

Under the authority of *Powhatan Mining Co. v. Ickes* (*supra*) the rulings of Hearing Officer Parkinson must be reversed. The petitioners were not afforded a full hearing.

POINT C

The Industry Committee improperly submitted report containing recommendations.

Section 511.19 of the regulations of the Administrator of the Wage and Hour Division on the subject of Industry Committees, provides:

"Report of Committee; Recommendations and Reasons.—Upon the completion of its investigation, the industry committee shall submit to the Administrator a report containing its recommendations together with a statement of the reasons supporting such rec-

ommendations. No such recommendations shall be made by the committee unless concurred in by a vote of not less than the majority of all its members. A copy of such report shall be signed by each member of the committee who approves it, either at a meeting of the committee or by circulation of one or more copies among the members of the committee. At any time within five days following the transmission to the Administrator of the recommendations and report of the committee, members dissenting from such recommendations and report may collectively or individually submit signed reports stating the reasons for their dissent and members concurring in the recommendations may collectively or individually submit separate signed reports setting forth their views."

This section clearly states that only members of the Industry Committee may sign a report. Only a majority are necessary to have a recommendation adopted, but the regulations specifically say "a copy of such report shall be signed by each member of the Committee who approves it * * *." The Record clearly shows that Messrs. Wirtz and Villamil, two members of the Committee, resigned on July 2, 1952. The Record also shows that the report of the Committee was executed in August, and signed by the two persons above named who had already resigned. The regulations make no provision for inclusion of recommendations by resigned members.

The effect in the order would be the same as if an order of the Court were signed by a Judge no longer a member of the Court.

Conclusion

On the basis of the record, it appears, therefore, that the approval by the Administrator of the recommendation of the Industry Advisory Committee must be set aside because of the absence of substantial evidence to support any of the findings of fact made by either or both of them and because the Petitioners' right to a fair hearing was denied by the refusal to grant Petitioners permission to examine into the identity of firms used to prepare economic report and because of the unlawful execution of the Committee's report.

The Petitioners pray that the order be set aside as arbitrary, and alternatively, that an order be made remanding the case to the Administrator to adduce additional evidence, with the right of Petitioners to inquire into and rebut evidence heretofore submitted from undisclosed sources.

Respectfully submitted,

ERWIN FELDMAN,
Attorney for Petitioners.

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BRIEF AND APPENDIX FOR THE RESPONDENT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11949

RED STAR MANUFACTURING CO., INC., MANATI PEARL WORKS,
INC., PETITIONERS

v.

F. GRANVILLE GRIMES, JR., ACTING ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION OF THE UNITED STATES DEPART-
MENT OF LABOR, RESPONDENT

ON PETITION TO SET ASIDE A WAGE ORDER ISSUED BY THE
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
Chief of Appellate Litigation,

JOSEPH M. STONE,
Attorney,

United States Department of Labor, Washington 25, D. C.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED JUL 1 1954

Joseph W. Stewart
CLERK

In the opinion of the respondent the questions presented are:

(1) Whether there was substantial evidence to support the finding of the Administrator that the minimum wage established for the Pearl Button and Buckle Division of the Button, Buckle, and Jewelry Industry in Puerto Rico would not substantially curtail employment therein?

(2) Whether the wage order was invalidated by the failure to disclose confidential sources of an insubstantial amount of economic information not shown to have been relied upon by the Administrator and not needed to sustain the order?

(3) Whether the wage order is void because two of the nine members of the industry committee, which voted unanimously to recommend the order, resigned after the vote but prior to the time of signing the report filed with the Administrator pursuant to Section 8 (d)?

(I)

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No. 11949

RED STAR MANUFACTURING CO., INC., MANATI PEARL WORKS,
INC., PETITIONERS

v.

F. GRANVILLE GRIMES, JR., ACTING ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION OF THE UNITED STATES DEPART-
MENT OF LABOR, RESPONDENT

*ON PETITION TO SET ASIDE A WAGE ORDER ISSUED BY THE
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR*

BRIEF FOR THE RESPONDENT

This case was instituted September 8, 1953, by the filing of a petition by Red Star Manufacturing Co., Inc., and the Manati Pearl Works, Inc., to review under Section 10 (a) of the Fair Labor Standards Act of 1938, as amended,¹ a wage order for the Button, Buckle and Jewelry Industry in Puerto Rico issued by the Administrator of the Wage and Hour Division of the Department of Labor (R. 2A). The petition seeks to set aside the wage order insofar as it raises the previous 46-cent minimum hourly rate to 54 cents for the Pearl Button and Buckle Division of the Puerto Rican Button, Buckle and Jewelry Industry.

STATEMENT

A. Provisions of the Act

Section 6 (a) of the Fair Labor Standards Act provides that every employer shall pay to each of his employees who is en-

¹ Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. (1946 ed.) 201 *et seq.*, as amended by the Fair Labor Standards Amendments of 1949, c. 736, 63 Stat. 910, 29 U. S. C., Supp. V, 201 *et seq.*

gaged in interstate commerce or in the production of goods for commerce, except employees so engaged in Puerto Rico or the Virgin Islands, not less than 75 cents an hour. With respect to employees in Puerto Rico and the Virgin Islands covered by the Act, administrative machinery is provided in Sections 5 and 8 of the Act for establishing wages in particular industries which may be lower than the statutory minimum.² The procedure as adopted by the Congress has two steps—investigation and recommendation by an industry committee and action by the Administrator of the Wage and Hour Division.

Step 1. The Industry Committee.—The Act directs the Administrator to appoint as soon as practicable a special industry committee, or separate industry committees for particular industries, to recommend the minimum rate or rates of wages to be paid employees in Puerto Rico and/or the Virgin Islands or in particular industries engaged in commerce or in the production of goods for commerce (Section 5 (a)). Industry committees are to be composed equally of representatives of the public, employers in the industry and employees in the industry (Section 5 (b)). The industry committee is directed to investigate conditions in the industry³ and to recommend to the Administrator "the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands" (Section 8 (b)). The industry com-

² Although this administrative machinery is designed to meet the peculiar economic problems in Puerto Rico and the Virgin Islands by permitting the establishment of rates below 75 cents an hour, "The policy of this Act," as stated in Section 8, "with respect to industries in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of [75 cents an hour] * * * in each such industry."

³ The Administrator is directed to submit to an industry committee pertinent available data on the matters referred to it and to cause witnesses whom he deems material to be brought before the committee (Section 5 (d)). The committee itself may summon witnesses or request the Administrator to furnish additional information (*ibid.*)

mittee is to recommend such reasonable classifications within the industry as it finds necessary for the purpose of fixing for each classification the highest minimum wage rate which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry (Section 8 (c)). Classifications solely on a regional basis or on the basis of age or sex are prohibited but the industry committee is to consider competitive conditions as affected by transportation, living and production costs, and wages established by collective bargaining and by employers who voluntarily maintain minimum wage standards (*ibid.*). When the industry committee has arrived at a minimum wage recommendation, Section 8 (d) of the Act directs it to file with the Administrator a report containing its recommendation.

Step 2. The Administrator.—After the industry committee has filed its report and recommendation with the Administrator, he is required to give interested parties due notice and an opportunity to be heard for or against the recommended minimum wage rate (Section 8 (d)). If the Administrator finds that the recommendations are made in accordance with law, are supported by the evidence adduced at this hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of Section 8 of the Act, he is directed to approve the recommendation of the committee and carry it into effect (Section 8 (d)). The Administrator must approve or disapprove the recommendation of an industry committee; he cannot change it.⁴ Any wage order based on

⁴ Prior to the 1949 Amendments to the Act limiting the wage order procedure to industries in Puerto Rico and the Virgin Islands, a virtually identical procedure was provided for raising the minimum to 40 cents an hour prior to the date such rate became effective by statutory provision and for lowering the rate below 40 cents an hour for particular industries after the date the 40 cents an hour minimum became effective. In a summary of that procedure that is equally apt to the procedure here, the Conference Committee stated:

"This carefully devised procedure has a double advantage. It ensures on the one hand that no minimum wage rate will be put into effect by administrative action that has not been carefully worked out by a committee drawn principally from the industry itself and on the other hand that no minimum wage rate will be put into effect by administrative action which

approval of an industry committee recommendation must be published in the Federal Register and reasonable notice thereof must be given to interested parties (Section 8 (f)). Wage orders are subject to direct review by the appropriate circuit courts of appeals (Section 10 (a)).

B. Proceedings of the Industry Committee

On May 8, 1952, the Administrator of the Wage and Hour Division appointed Industry Committee No. 12 for the Button, Buckle, and Jewelry Industry in Puerto Rico (R. 61A). Three persons representing the public, three representing employers in the industry and three representing employees in the industry were appointed to the Committee (R. 61A).

Public hearings were held by the Committee on June 24, 25, 26, 27, 30, and July 1, 1952, pursuant to notice published in the Federal Register (62A). On the basis of its investigation of the industry and after considering economic and competitive conditions in the industry, the Committee concluded that the industry is composed of a number of distinct divisions, of which the Pearl Button and Buckle Division is one, which are separable from each other and that it is "reasonable and necessary" to fix minimum wage rates for each such division (R. 63A-64A). All interested parties desiring to appear and present evidence deemed pertinent were heard. The transcript of the record of these hearings totals 738 pages, of which 332 were related to the Pearl Button and Buckle Division of the industry; 34 exhibits, of which 16 pertinent to the Pearl Button and Buckle Division, were introduced, and 23 witnesses presented evidence, 7 of whom appeared on behalf of this Division of the industry. From the exhibits introduced and the evidence of the interested parties, the Committee "obtained information with regard to the nature of the industry and its operations, wages paid in the Industry, living and production costs, the economic and competitive situation of the

has not been found by an administrative official of the Government, exercising an independent judgment on the evidence, and responsible to Congress for his acts, to be in accordance with law" (H. Rept. No. 2738, 75th Cong., 3d Sess. p. 31).

Industry, the probable effect of increased or decreased labor costs on employment in the Industry, and other relevant factors" (R. 62A).

The Committee met in executive session on July 1, 1952, and after consideration of the evidence before it, recommended that the Industry be divided into separate divisions. The Pearl Button and Buckle Division was defined by the Committee to include "the manufacture of buttons and buckles from ocean pearl or other natural shell" (R. 64A) and by unanimous vote the Committee recommended a 54-cent-an-hour minimum wage rate for employees in that division of the Industry who are engaged in commerce or in the production of goods for commerce (R. 66A). The Committee unanimously voted to recommend the 54-cent-minimum wage rate on July 1, 1952. In August 1952 the Committee filed with the Administrator its formal report signed by all nine members of the Committee, including two members who had resigned prior thereto but after the vote had been taken to recommend the 54-cent rate.

In its report the Committee stated that the recommended minimum wage rates are the highest rates which may be fixed under the Act which will not substantially curtail employment in the various divisions of the Industry or cause material dislocations in the Industry as a whole (*ibid.*). The Committee was further "convinced" that "none of its recommendations will give a competitive advantage to any group in the Industry or to any industry in Puerto Rico over any industry in the United States outside of Puerto Rico" (*ibid.*).

C. Proceedings before the Administrator

On August 30, 1952, the Administrator published in the Federal Register notice of a public hearing on the question whether the recommendations of Industry Committee No. 12 should be approved or disapproved (17 F. R. 7946-7949). All interested persons were advised by the notice that they would have the right to appear for or against the recommendations of the Industry Committee, that they could produce testimonial or documentary evidence, that witnesses or documents would be subpoenaed upon request, that all evidence would be received

under oath, and that cross-examination would be permitted "as may be required for a full and true disclosure of the facts" (*ibid.*).

The hearing, conducted by a Hearing Examiner of the United States Department of Labor, was held on October 7, 1952 in Washington, D. C. (R. 70A, 72A). Officials of the Petitioners in the instant action and their attorney appeared to present objections to the 54-cent rate recommended by the Committee (R. 71A). The president of the National Association of Fresh Water Pearl Button Manufacturers on the mainland appeared in support of the 54-cent minimum, although stating that the "evidence we gave perhaps warranted a higher rate" (R. 197A). In addition, the economic report which had been submitted to the Industry Committee by the Wage and Hour Division of the United States Department of Labor was resubmitted at the administrative hearing, together with supplemental data bringing the report up to date (R. 104A). During this hearing, over 160 pages of oral evidence were taken, all relating to the Pearl Button and Buckle Division; 29 exhibits, all pertaining to some extent to this same Division were introduced; and 5 out of the 6 witnesses who appeared testified concerning conditions in this Division. Subsequent to the conclusion of this hearing, the Petitioners herein submitted a memorandum to the Administrator detailing facts and presenting contentions they deemed persuasive of the view that the Industry Committee's recommendations should be disapproved.

The Administrator's Findings and Opinion ⁵ (R. 208A-218A) approving the recommendation of Industry Committee No. 12 for a 54-cent rate in the Pearl Button and Buckle Division of the Button, Buckle, and Jewelry Industry in Puerto Rico were issued on April 9, 1953 (R. 218A).

After outlining the primary statutory considerations, the Findings and Opinion of the Administrator reviewed and analyzed the evidence in the record relating to the pertinent economic and competitive factors, including the relative position in the market of the Puerto Rican and mainland producers, the volume and value of shipments of finished and unfinished

⁵ Petitioners in their brief at p. 3 mistakenly characterize the Findings and Opinion issued by the Administrator on April 9, 1953, as "Proposed."

ocean pearl and shell buttons from Puerto Rico to the mainland as compared with mainland production during the preceding years, the survey of wage rates in Puerto Rico conducted by the Wage and Hour Division in December 1951 and January 1952, the available evidence relating to labor costs, the evidence relating to the profits and losses of the Puerto Rican manufacturers during the preceding years, and in general all of the evidence bearing on the probable effect of an increase in the existing minimum wage rate (R. 208A-213A). The Administrator found "on the basis of all the evidence" that "the recommended minimum of 54 cents an hour is the highest rate which can be established at this time without substantially curtailing employment," that "the recommended increase in minimum wages can be borne by the companies in this division without substantially curtailing employment in this industry," and "that the recommended rate will not give the insular companies in this division a competitive advantage over any other industry in the United States outside of Puerto Rico" (R. 214A, 215A).

SUMMARY OF ARGUMENT

I

Petitioners, pointing to a few isolated portions of the evidence, assert broadly that no substantial evidence supports the findings of the Administrator that the recommended increased wage of 54 cents an hour will not substantially curtail employment in the industry. The Administrator's findings of course rest upon the pertinent evidence in the entire record. His task, under the Act, is not a simple one of finding tangible facts, but involves the consideration and appraisal of a variety of intangible "economic and competitive" factors and the exercise of "administrative judgment as to the relative weights to be given these factors in each case" *Opp Cotton Mills v. Administrator*, 312 U. S. 126 at 145-146.

Viewed in the context of the record as a whole, and in the light of the Administrator's statutory function, there is clearly substantial evidence to support the Administrator's findings in approving the 54-cent minimum wage recommended by the Industry Committee. The Administrator's findings and con-

clusions rested upon substantial evidence demonstrating (1) that the Puerto Rican industry over the preceding four years had substantially increased its relative proportion of the market as compared with the industry on the mainland, (2) that the previous increase in the minimum wage rate in Puerto Rico had not caused any curtailment of employment and there was no sound basis warranting the conclusion that the 54-cent rate would cause any such curtailment, (3) that the Puerto Rican industry had operated on a profitable level over the preceding four years despite fluctuations in profits and losses from year to year due to general business conditions and (4) that the 2 percent increase in total costs resulting from the 54-cent rate could be absorbed without substantial, if any, curtailment of employment.

In the main, Petitioners' attack upon the findings of the Administrator amounts to little more than an assertion that other inferences may be drawn from the evidence than those drawn by the Administrator, and disagreement with the Administrator's judgment as to the relative weight to be given various economic and competitive factors. But plainly it is the Administrator's task, and not the function of court review, to determine the relative weight to be given these factors and the inferences to be drawn from the evidence. *Opp Cotton Mills v. Administrator, supra*; *National Association of Wool Manufacturers v. Fleming*, 74 App. D. C. 223, 225, 122 F. 2d 617, 619, 622; and *Southern Garment Manufacturers Association v. Fleming*, 74 App. D. C. 228, 238, 122 F. 2d 622, 632.

II

The wage order is not invalidated and no reversible error was committed because of the failure to disclose the confidential sources of an inconsequential amount of economic information submitted in evidence. Contrary to Petitioners' assertions there is no indication that the Administrator relied upon the data in question and it was plainly neither crucial nor necessary to the Administrator's decision, which was substantially supported by other and more significant evidence. If there was any error in admitting such data into evidence, its admission cannot be said to have prejudiced anyone in the absence of a

showing that the Administrator relied upon it, nor did its admission constitute reversible error since the wage order was otherwise sustained by substantial evidence. *Sisto v. Civil Aeronautics Board*, 86 App. D. C. 31, 179 F. 2d 47; *Cia Mexicana de Gas v. Federal Power Commission*, 167 F. 2d 804, 806-807 (C. A. 5).

Even if the data in question had been of more substantial significance, the right to a hearing does not include a right of unlimited cross-examination of all information secured from confidential sources where, as here, the proceeding is a rule making or a legislative, rather than an adjudicative, proceeding. *Opp Cotton Mills v. Administrator*, 312 U. S. 126 and *Norwegian Nitrogen Company v. United States*, 288 U. S. 294. Economic information of the kind here in question is obviously "legislative" in character and bears only indirectly or obliquely on the decision to be made. In such circumstances, "cross-examination is frequently not only unnecessary * * * but affirmatively objectionable * * *" *Davis on Administrative Law* (1951) p. 498. Frequently cross-examination of such data adds nothing substantial to the record and unnecessarily prolongs the hearing. Where, as in the instant case, the Administrator is performing a rule making or legislative function and his expert and informed judgment must enter into the decision, the slight danger that any interested parties may be prejudiced by limiting cross-examination is outweighed by the practical considerations that hearings not be unduly protracted and that the Administrator not be deprived of the assistance of such data by being compelled to disclose confidential sources on which the efficiency of important governmental functions depends.

III

There is no merit in the contention that the Committee report was improperly signed and submitted because two members of the Committee resigned before signing. Apart from the signatures of the two members in question, the report was properly approved and signed by a majority of the members of the Committee. Their signatures were obviously sufficient to meet the statutory requirements as well as the requirements of the Administrator's regulation. The triviality, if not ab-

surdity, of Petitioners' objection is evident from the fact that the report would have been plainly unobjectionable, and signed in strict accordance with the literal requirements of the regulation, if the two resignees had dissented and therefore not signed. The objection is a purely hypertechnical one and at most a harmless error. Section 10 (e) of the Administrative Procedure Act.

ARGUMENT

I. There is substantial evidence to support the Administrator's finding that a 54-cent minimum wage rate would not substantially curtail employment in the Pearl Button and Buckle Division of the Button, Buckle, and Jewelry Industry in Puerto Rico

As is evident from the wage order provisions of the Act (Sections 5 and 8) and the face of the Administrator's decision, the Administrator's task in establishing a minimum wage rate is not a simple mathematical task, but involves the consideration and weighing of many complicated and intangible economic, competitive and employment factors. The Administrator, before approving a wage recommendation, must find that, taking into consideration the relevant "economic and competitive conditions," the recommendation "will carry out the purposes" of the statutory provision (Section 8 (b) and (c)). "The factors to be considered in arriving at these determinations, both those specified and 'other relevant factors,' are those which are relevant to or have a bearing on the statutory objective." See *Opp Cotton Mills v. Administrator*, 312 U. S. 126 at 145. If the basic statutory purposes are to be served, the "economic and competitive conditions" to be weighed by the industry committee and the Administrator include *inter alia* consideration of past and present employment conditions as well as employment prospects in the industry, the earnings and financial condition and prospects of the industry, the relative position of the Puerto Rican industry as compared with its mainland competitors, and the experience and prospects of the industry's ability to absorb increased labor costs without substantial curtailment of employment.

The Act poses for the Administrator the difficult task of weighing and synthesizing all of these economic and competitive factors so as to achieve the objective of establishing "the highest minimum wage rates" (within the 75-cent limit) which "will not substantially curtail employment" in Puerto Rico and at the same time will not give Puerto Rican industry "a competitive advantage" over industry on the mainland of the United States (Section 8 (b)). In delegating the wage order authority, as the Supreme Court has stated with respect to the comparable general wage order provision of the Act as originally enacted, "Congress accepts the administrative judgment as to the relative weights to be given to these factors in each case when that judgment in other respects is arrived at in the manner prescribed by the statute, instead of attempting the impossible by prescribing their relative weight in advance of all cases" *Opp Cotton Mills v. Administrator*, 312 U. S. at 145-146.

In May 1952 when the instant wage order proceeding was instituted, the pearl button industry in Puerto Rico enjoyed, except for the first eight months of 1950 (when the differential became 100 percent by reason of the increase of the statutory minimum to 75 cents for the mainland) more of a minimum wage differential over its mainland competitors than at any time since the enactment of the Fair Labor Standards Act in 1938.⁶ Indeed, for the greater part of the period 1938-1952, the Puerto Rican industry enjoyed much less of a differential in the minimum wage rate than the differential which will be

⁶ Mainland producers, since January 1950, have been subject to the 75 cents minimum wage rate established by the 1949 amendments to the Fair Labor Standards Act, c. 736, 63 Stat. 910, 29 U. S. C., Supp. V, 201, *et seq.*). At the time the 75-cent minimum became effective, the statutory minimum wage rate applicable to the Puerto Rican producers was 37½ cents, that is, just one-half of the minimum rate applicable to the mainland (R. 54A). The Puerto Rican producers enjoyed this 100 percent differential until August 21, 1950, when the 46-cent minimum wage rate became effective. While the 75-cent rate represented a 35-cent increase over the previous minimum wage rate of 40 cents (or almost a 90% increase) applicable to the mainland producers, the increase for Puerto Rican producers to 46 cents represented only 8½ cents, or less than a 25% increase.

afforded by the 54-cent rate.⁷ Significantly, the Puerto Rican industry has successfully competed with the mainland producers during this entire period, including the years 1938 to 1942 when Puerto Rican producers operated with the same statutory minimum wage rate applicable to mainland producers (R. 35A). It is of interest to note, in this connection, that petitioner Manati was established in Puerto Rico at a time when the differential in wage rates was substantially below what it has been at the 46-cent rate and what it will be at the 54-cent rate and, also, that the reduction of the differential by the establishment of the 46-cent rate in August 1950 does not appear to have caused the value of Puerto Rican production to suffer a decline relative to mainland production.⁸

While it is clear that Congress intended to authorize minimum wage differentials for Puerto Rican industries if such differentials are necessary to avoid substantial curtailment of employment, it is also the express policy of the Act that Puerto Rican industries *not* be given "a competitive advantage over any industry in the United States outside of Puerto Rico" (Section 8 (b)). Thus the Administrator is expressly under the duty "to reach as rapidly as is *economically feasible* without substantially curtailing employment *the objective of the [75 cent] minimum wage*" for Puerto Rican industries (Section 8 (a), emphasis supplied); to this end

⁷ Comparison of Statutory Minimum Hourly Wage Rates for Puerto Rico and United States, 1938-1953.

Period	Puerto Rico	Mainland	Differential
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Oct. 24, 1938-Oct. 23, 1939.....	25	25	0
Oct. 24, 1939-Oct. 18, 1942.....	30	30	0
Oct. 19, 1942-Oct. 23, 1945.....	30	40	10
Oct. 24, 1945-July 18, 1948.....	35	40	5
July 19, 1948-Jan. 24, 1950.....	37½	40	2½
Jan. 25, 1950-Aug. 20, 1950.....	37½	75	37½
Aug. 21, 1950-Sept. 13, 1953.....	46	75	29
Since Sept. 14, 1953.....	54	75	21

⁸ The value of mainland production of ocean pearl and fresh water shell buttons declined from \$13,314,000 in 1950 to \$11,520,000 in 1951, while the value of Puerto Rican production only declined from \$1,708,000 in 1950 to \$1,605,000 in 1951 (R. 53A).

the Industry Committee is required by the Act to recommend "the *highest* minimum wage rate" which will not substantially curtail employment (Section 8 (b), emphasis supplied) and the Administrator is required to carry such recommendation into effect if he finds that it will carry out the purposes of the wage order program in Puerto Rico and it is made in accordance with law and supported by evidence adduced at the hearing (Section 8 (d)).

In the instant case, the Administrator concluded, after a thorough analysis of an extensive record,⁹ that there was substantial evidence to support the view that a 54-cent rate would not substantially curtail employment in the industry. Petitioners, far from demonstrating a lack of substantial evidence to sustain the Administrator's findings, have simply singled out for attack certain isolated economic factors out of context of the entire record. The Administrator, and this Court, are required, of course, to consider the pertinent evidence in the entire record. The following summary of pertinent evidence in the entire record demonstrates, we submit, that the findings of the Industry Committee and the Administrator are supported by substantial evidence.

Four principal factors supporting the Administrator's findings and wage order emerge from the record as a whole: (1) the Puerto Rican industry over the past four years (1948-1951) has substantially increased its relative proportion of the market as compared with the industry on the mainland; (2) there is no evidence that the increase in the minimum wage rate in Puerto Rico in 1950 has caused any curtailment of employment, nor is there evidence warranting the conclusion that the 54-cent rate will cause curtailment of employment; (3) during the past four years (1948-1951), although there have been fluctuations in profits and losses from year to year due to general business conditions, the Puerto Rican industry has operated on a profitable level over the period as a whole, and

⁹ The transcript of the record of these hearings totals 738 pages, of which 332 were related to the Pearl Button and Buckle Division of the industry; 34 exhibits, of which 16 pertinent to this Division were introduced, and 23 witnesses presented evidence, 7 of whom appeared on behalf of this Division of the industry.

the evidence shows that general business conditions, not wage rates, are responsible for the fluctuations; and (4) the direct increase in total costs resulting from the establishment of a 54-cent rate only amounts to about two percent, a modest increase which can be absorbed without substantial, if any, curtailment of employment.

The ocean pearl button industry, insofar as the United States and Puerto Rico are concerned, consists of about twenty-five manufacturers on the mainland, and three in Puerto Rico,¹⁰ the Puerto Rico firms being among the largest in the industry (R. 33A, 210A, Tr. 421, Respondent's App. p. 2a).¹¹ Since the United States mainland is virtually the sole market for ocean pearl buttons (R. 29A), Puerto Rican manufacturers are, of course, in direct competition with mainland producers.¹²

Available statistical data on the volume and value of mainland production as well as of shipments from Puerto Rico to the mainland demonstrate conclusively that in recent years there has been a substantial improvement in the position of

¹⁰ The three companies engaged in the manufacture of pearl buttons in Puerto Rico are: Red Star Manufacturing Company, Inc., which is affiliated with Red Star Button Company, Inc., of New York and began operations in Puerto Rico in 1923; Porto Rican American Button Company, Inc., which was established in 1935; and Manati Pearl Works, Inc., owned by Excelsior Pearl Works, Inc., of New York, which was established in early 1948. The output of Red Star Manufacturing Company, Inc., consists entirely of finished buttons; the production of Porto Rican American Button Company, Inc., consists primarily of finished buttons, but some "blanks" are cut for finishing elsewhere. "Blanks" constitute the principal product of Manati Pearl Works, Inc., although a substantial volume of finished buttons is also produced (R. 27A, 33A, 40A, 155A).

¹¹ All Tr. references in this brief refer to evidence in the transcript of the hearings in this case which was not included in the printed record; these additional parts of the record are printed as an appendix to this brief.

¹² Both Puerto Rican and mainland manufacturers of pearl buttons also face competition from plastic and fresh water shell buttons (R. 45A, 46A, 48A). As a result of lower prices, sales of plastic buttons have increased substantially in recent years at the expense of both ocean pearl and fresh water shell buttons. However evidence in the record indicates that during the period immediately preceding the Committee hearing the encroachment of plastic buttons on the ocean button market had ceased, apparently because of a change in consumer demand and an advertising campaign conducted by ocean pearl button manufacturers (Tr. 100-101, 153-154, Respondent's App., p. 1a).

Puerto Rican production relative to mainland production.¹³ Thus, a comparison of Puerto Rican shipments of finished ocean pearl buttons with total United States production of ocean pearl buttons (mainland production plus Puerto Rican shipments), indicates that the proportion of Puerto Rican shipments, in terms of quantity, was substantially higher in the period 1949-1951 than in either 1947 or 1948, while in terms of value the proportion increased steadily from only 8.2 percent of the total in 1948 to 14.2 percent in 1951 (R. 35A).¹⁴

The situation is even more favorable for the Puerto Rican ocean pearl button industry if its shipments are compared with mainland production of fresh water shell buttons (with which the ocean pearl button competes) as well as ocean pearl buttons. Thus, the proportion of Puerto Rican shipments of finished buttons, in terms of quantity, to total United States production of ocean pearl and fresh water buttons increased from only 6.1 percent in 1946 to 10 percent in 1950 before suffering a slight decline to 9.5 percent in 1951. In terms of value, the proportion increased uninterruptedly from 5.1 percent in 1947 to 10 percent in 1951 (R. 35A).

If the value of Puerto Rican shipments of blanks is added to the value of finished button shipments, the favorable position of the Puerto Rican industry relative to mainland ocean pearl button producers is even more strikingly demonstrated. Thus, the proportion of the value of Puerto Rican shipments of finished buttons and blanks to the total value of United States production of ocean pearl buttons more than doubled between

¹³ The increase in Puerto Rico's share of the market since the effective date of the 75-cent minimum applicable to mainland producers, a period in which mainland manufacturers, and particularly fresh water shell button producers suffered a substantial decrease in production (and presumably employment) (R. 53A), suggests the possibility that the expansion or maintenance of Puerto Rican employment may be at the expense of reduced employment on the mainland. Such a result was clearly never intended by the Act.

¹⁴ Due to labor shortages experienced on the mainland in the closing years of the war and in the period immediately following its conclusion, the proportion of Puerto Rican shipments was at an unusually high level during these periods (R. 46A). With the restoration of more normal labor conditions on the mainland the proportion of Puerto Rican shipments dropped until 1948, but since that time there has been a steady increase in the importance of Puerto Rican shipments relative to mainland production.

1948 and 1951, rising from 8.7 percent in the former year to 17.8 percent in the latter year. And, if production of fresh water buttons is included, the proportion of Puerto Rican shipments increased from 5.3 percent in 1947 to 12.5 percent in 1951.¹⁵

The evidence also shows equally clearly that the last increase in the minimum wage (to 46 cents), far from producing adverse effects on this industry in Puerto Rico, was actually followed by increases in both production and employment. Since the effective date of the 46 cent minimum there has been no reduction, but on the contrary an increase, in the annual volume and value of the production of Puerto Rican firms during the years 1951 and 1952. In these years, Island companies produced 968,571 and 869,065 gross of finished buttons and 170,173 and 208,321 pounds of unfinished buttons, respectively, as compared with only 831,278 gross and 124,367 pounds in 1949 (R. 32A, 211A-212A); in terms of dollar value, the total value of shipments of finished and unfinished buttons in 1951 and 1952 amounted to \$1,604,706 and \$1,655,400 as compared with \$989,266 in 1949 (ibid.).

That this increase in production was not adversely affected by the increase in the minimum wage is evident from the fact that in the months immediately following, production continued to increase. Thus, average monthly shipments of

¹⁵ The following table contains percentage figures showing the proportion of the value of Puerto Rican shipments to (1) total United States ocean pearl production and to (2) total United States production of ocean pearl and fresh water buttons combined. These figures were computed from data appearing in the tables at R. 32A and 35A.

Year	Proportion of Puerto Rican shipments to—	
	Ocean pearl buttons only	Ocean pearl and fresh water buttons combined
1946.....	14.1	7.1
1947.....	10.3	5.3
1948.....	8.7	5.5
1949.....	13.2	8.8
1950.....	16.4	11.8
1951.....	17.8	12.5

finished pearl buttons amounted to 90,786 gross during the period January–August 1950, compared with 110,012 gross in October 1950; 172,213 gross in November 1950; 97,918 gross in December 1950; 100,107 gross in January 1951; and 142,010 gross in March 1951. Shipments in November 1950 were higher than in any other month in 1950. Shipments were somewhat lower than the January–August 1950 monthly average in September 1950 and in February 1951, but even in those months the value of shipments exceeded the average monthly value for January–August 1950. Similarly, substantial increases in shipments of blanks were also registered subsequent to August 1950. Shipments amounted to 49,356 pounds in September 1950 and 28,609 pounds in November 1950, compared with average monthly shipments of only 23,058 pounds in the period January–August 1950. Blank shipments in September 1950 were the highest recorded in any month in 1950.¹⁶

With respect to employment in the ocean pearl button industry in Puerto Rico, the evidence shows that fluctuations in such employment have been due to general business con-

¹⁶ The table in the Record (R. 32A) contains only the annual shipments for 1950 showing a record high shipment for that year. The monthly breakdown of shipments in 1950 shows that a substantial part of this increase occurred in the last 4 months of the year when the 46 cent minimum was in effect.

Month	Finished buttons		Blanks	
	Gross	Value	Pounds	Value
January.....	64,378	\$66,334	16,134	\$31,905
February.....	79,257	73,971	20,452	39,957
March.....	109,063	104,973	24,273	48,496
April.....	91,143	91,704	10,090	37,187
May.....	121,987	101,586	16,125	33,300
June.....	101,466	94,117	45,560	62,790
July.....	70,429	67,279	17,324	31,714
August.....	88,567	88,196	34,506	53,072
September.....	82,020	94,322	49,356	72,472
October.....	110,012	112,365	11,899	19,099
November.....	172,213	182,213	28,609	49,238
December.....	97,918	116,007	19,638	35,312

Source: U. S. Department of Commerce, Bureau of the Census, Report No. FT-800; *United States Trade in Merchandise and Gold and Silver With United States Territories and Possessions*, monthly releases, 1950.

ditions, not to the minimum wage rate in existence at a particular time.¹⁷ In 1948, when the differential between the Island and mainland rate was only 2½ cents an hour, one of the petitioners, Manati Pearl Works, Inc., was established in Puerto Rico and transferred some of its mainland operations to the Island (R. 27A). Moreover, the evidence shows that, contrary to the claims of the Puerto Rican producers at the hearings which resulted in the raise to 46 cents that employment would be severely curtailed in Puerto Rico by such a raise, no reduction in employment resulted from the increase. On the contrary, employment appears to have increased subsequent to the increase in the minimum wage rate. While economic conditions were not as favorable in 1951 as in 1950 and there was thus some decline from the 1950 high level of employment, even then it remained at a level higher than it had been in 1949.

According to the available employment data for petitioner, Red Star Manufacturing Company, Inc., average monthly employment increased from 171 employees in 1949 to 271 in 1950, 210 in 1951 and 191 for the first seven months of 1952 (Tr. 485, 740, Respondent's App. p. 3a, 5a); peak employment for that company was achieved in the several months *following* the establishment of the 46-cent rate.¹⁸ Thus, despite less favorable

¹⁷ There was a considerable reduction in employment from 1937-1938 to 1938-1939, as the result of increased mechanization of the industry induced by the enactment of the 25 cent minimum wage under the Fair Labor Standards Act of 1938 (R. 19A, 54A). But mechanization of the industry in Puerto Rico is today at its highest point equaling the mechanization on the mainland, so that there is no claim that any further mechanization which would curtail employment opportunities is either probable or possible (Tr. 647, Respondent's App. p. 5a).

¹⁸ Red Star employment increased from an average of 235 in the 12-month period Sept. 1949-Aug. 1950 to an average of 248 in the 12-month period Sept. 1950-Aug. 1951. The rise in employment in the several months immediately following the establishment of the new minimum is even more impressive. In the seven-month period Sept. 1950-Mar. 1951 average employment amounted to 281 compared with an average of 251 in the seven months immediately preceding Sept. 1950 and only 208 in the seven-month period Sept. 1949-Mar. 1950. While for the calendar year 1951 and the first seven months of 1952 the employment of Red Star Manufacturing Company was below the 1950 level, it seems clear from the high employment level of the several months following Aug. 1950 that the establishment of the 46-

business conditions in 1951 as compared with 1950, there was an average increase in monthly employment of thirty-nine workers, or 23 percent, over 1949 (Tr. 485, Respondent's App. p. 3a). For the period September 1950 through July 1952, Red Star's monthly employment, on an average, equaled 219 workers, as compared with its average monthly employment of only 171 workers in 1949—an average increase in employment for the two years since the effective date of the 46-cent wage order of almost 30 percent.

Petitioner Manati did not submit as extensive employment data as did petitioner Red Star and, in particular, no employment data was presented for the last eight months of 1950, a period in which employment was presumably at its peak in view of the highly favorable business conditions in the industry and the substantial increase in production and shipments during that period (*see supra*, p. 17). Comparison of available data also indicates that Manati's average monthly employment in 1951 approximated that of 1949 (Tr. 743-744, Respondent's App. p. 6a).

To counteract the evidence indicating an increase in employment, petitioners contend that there has been "a decline in the number of hours worked each week by each employee" (Pet's. br. p. 4). However, there is no evidence showing that the total number of weekly man hours of work has decreased. On the contrary, the available data indicates that the average weekly man-hours of work for Red Star were higher in 1951 and 1952 than they were in 1949, though not as high as they were in the exceptional year of 1950 (Tr. 740, Respondent's App. p. 5a). The available data for Manati also shows that the total man-hours of work during the average workweek were approximately the same in 1951 as they were in 1949 (Tr. 743-744).

Plainly the available statistical data on employment do not present a picture of substantial curtailment of employment in the industry, but rather indicate quite clearly that total em-

cent minimum was not related to the decline in 1951; and despite the decline in 1951, employment nevertheless averaged 210 in 1951 and 191 in the first seven months of 1952, as compared with only 171 in 1949 (Red Star Exh. K (Tr. 485, Respondent's App. p. 3a); Red Star. Exh. 4 (Tr. 740, Respondent's App. p. 5a)).

ployment in the industry in 1951 was substantially higher than in 1949.

Moreover, the Puerto Rican industry has operated on a profitable basis looking at the past four-year period (1948-1951) as a whole. While there have been fluctuations in profits during this period, it is apparent that other economic factors, and not the minimum wage rate, are responsible for such fluctuations. This is dramatically illustrated by the fact that profits for the year 1950 were at a very high level when the minimum wage rate was at the highest point it had ever been up to that time. Obviously, the high profits enjoyed by petitioners in 1950 were no more related to the existing minimum wage rate than was the loss experienced by Manati in 1951, a year of unfavorable business conditions in which Red Star nevertheless operated at a profit.

Specifically, the record contains the following net profit figures for the Red Star enterprises for the years 1948 through 1951 (R. 42A, 43A, 55A-57A; Tr. 490-492, Respondent's App. pp. 3a-5a):

Year	Total		Red Star Button Company, Inc.		Red Star Manufacturing Company, Inc.	
	Before tax	After tax	Before tax	After tax	Before tax	After tax
1948.....	\$28,540.74	\$22,775.38	\$4,540.82	\$3,560.75	\$23,899.92	\$19,214.63
1949.....	38,197.26	30,134.53	15,636.99	12,013.98	22,560.27	18,120.55
1950.....	156,340.70	116,643.31	22,060.44	16,833.59	134,280.26	99,809.72
1951.....	19,320.95	14,744.79	5,747.40	3,946.95	13,573.55	10,797.84
Total.....	242,399.65	184,298.01	48,085.65	36,355.27	194,314.00	147,942.74

¹ The profit of \$3,946.95 in 1951 which petitioners presumably attribute to Red Star Manufacturing Co., Inc., was actually made by Red Star Button Company, Inc., the mainland affiliate and sales agent of petitioner, Red Star Manufacturing Co., Inc. (R. 43A).

During this four-year period the average annual consolidated net income before taxes amounted to over \$60,000, while the average net income after taxes amounted to about \$46,000.

Although Manati, during this same period, operated at a net loss during three of the years in question, it must be remembered, in appraising Manati's financial record that, as is usual with new businesses, losses were anticipated during its initial years of operations (R. 21A, 41A, 58A-60A). Of much more significance is the fact that although it was a new business, it

made a large enough profit in 1950 (\$52,951.78 before taxes and \$45,795.80 after taxes) to more than offset its net losses during the other three years, earning a net profit for the four-year period of \$17,832.18 before taxes and \$10,676.20 after taxes (R. 44A, 58A-60A).

Thus, while the pearl button industry may not have accumulated a particularly outstanding profit record in the last several years, its financial position and prospects cannot reasonably be considered inadequate to support the modest increase in the minimum wage which has been approved. The Administrator found that the direct increase in the wage bill required by the minimum wage increase is only 6.8 percent and since wages constitute only 29 percent of total costs, the direct increase in total costs only amounts to about 2 percent (R. 52A, 213A).¹⁹

In determining whether to approve a recommended minimum wage rate, the Administrator, as indicated at the outset of the argument on this Point, must necessarily exercise an informed judgment that a substantial curtailment of employment will not result from the establishment of that wage rate. Thus, among the many relevant factors in such a determination, he must not only consider whether employers are in a financial position to absorb an increase in the rate, however, modest, without substantially curtailing employment, but also whether they are likely to remain in such a financial position in the immediate future. This entails, of course, an assess-

¹⁹ Petitioners contend that the Administrator failed to take into account indirect increases required for the maintenance of differentials (Pets' Br. pp. 11, 24, 25). The Administrator specifically considered the problem of indirect increases and concluded that "past experience has repeatedly indicated that firms do not maintain existing occupational differentials if the result of such voluntary action is a substantial curtailment of the level of employment." (R. 213A.) See, for example, the United States Department of Labor, Wage and Hour Division, *Minimum Wages in the Seamless Hosiery Industry*, March 1941, pp. 63, 65, 68-71; United States Department of Labor, Bureau of Labor Statistics, Wage Structure Series No. 2, p. 76, *Lumber in the South 1949 and 1950*, pp. 1, 4; United States Department of Labor, Bureau of Labor Statistics, Wage Structure Series, Bureau of Labor Statistics Report No. 45, *Southern Lumber Industries*, April 1953, pp. 2, 3; United States Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, June 1951, pp. 672-676; and Termination Report of the National War Labor Board, Volume I, pp. 247-248.

ment of the industry's prospects in terms of future operations at an employment level not substantially below what it has been in the immediate past.

In the instant case, by approving a 54-cent minimum wage rate, the Administrator, in effect, concluded that, in his judgment, the industry's prospects were such as to warrant the conclusion that employers would be in a position to absorb an increase of 2 percent in their total costs without substantially curtailing employment. That the Administrator was correct in this view is confirmed by subsequent developments which, of course, were not known with certainty at the time the 54 cent minimum was approved and are not in the record in this case. But these developments are now facts of public record, and illustrate the importance of the informed judgment of the Administrator in weighing the intangible economic factors pertinent to these wage determinations. The value of the industry's production in 1953 has exceeded even the unusually high of 1950.²⁰ Also in proportion to the total United States production of ocean pearl buttons, the total value of Puerto Rican shipments increased from 17.8 percent in 1951 to 29.1 percent in 1952, and the Puerto Rican proportion of combined United States production of ocean pearl and fresh-water buttons increased from 12.5 percent in 1951 to 16.4 percent in 1952.²¹

²⁰ In 1953, the Puerto Rican industry shipped to the mainland 1,048,358 gross of finished buttons valued at \$1,461,560, representing increases of 20.6 percent and 18.3 percent, respectively, over 1952. (United States Department of Commerce, Bureau of Census, *Report No. FT800, United States Trade in Merchandise and Gold and Silver With United States Territories and Possessions, Calendar Year 1953*, p. 16.) Shipments of blanks in 1953 amounted to 266,913 pounds valued at \$488,321, representing an increase of 28.1 percent and 13.5 percent, respectively, over the preceding year. (*Ibid.*) The total value of Puerto Rican shipments of buttons was at an all-time high in 1953, exceeding the previous 1950 peak by 14 percent. (*Report No. FT800, 1953, supra*, p. 16; R. 32A.) Moreover, the proportion of the value of total United States production represented by Puerto Rico shipments in 1953 was at the highest level ever attained—32.1 percent of the value of ocean pearl production and 17.3 percent of the value of ocean pearl and fresh water production combined. (*Report No. FT 800, 1953, supra*, p. 16; United States Department of the Interior, Fish and Wildlife Service, *United States, Production of Fresh-Water Mussel Shell, 1953*, and *United States Production of Marine Pearl Shell Buttons, 1953*.)

²¹ Report No. FT800, 1952, *supra*, p. 15; United States Department of the Interior, Fish and Wildlife Service, *Canned Fish and Byproducts, 1952*, p. 15; R. 32A; R. 35A.

Although petitioners contend that the industry is unable to absorb labor cost increases without curtailment of employment opportunities (Pets' Br. p. 24), they neither point to any evidence in the record to support this view nor do they demonstrate where or how the Administrator erred in reaching a contrary conclusion. Petitioners simply draw different conclusions from the same evidence considered by the Administrator.²² In effect, they are now requesting this Court to substitute its "judgment of the weight of the evidence and the inferences to be drawn from it for that of the Administrator which the statute forbids" (*Opp Cotton Mills, Inc. v. Administrator*, 312 U. S. 126, 156).

The Administrator would be the first to concede that a minimum wage rate under the Act can hardly be established with mathematical precision. But his conclusion here "rests squarely in that area where administrative judgments are entitled to the greatest amount of weight by appellate courts. It is the product of administrative experience, appreciation of

²² Petitioners, for example, lay great stress on the letter from Teodoro Moscoso to the Administrator of the Wage and Hour Division (Pets' Br. pp. 11-13) and apparently believe that the Administrator "failed to give timely and proper consideration to [Moscoso's] * * * statement" (Petitioners' Assignments of Errors, R. 6A). This letter, however, was simply an expression of opinion to be weighed or considered in the light of the many economic, competitive and employment factors which the Administrator is required to consider. Petitioners also emphasize the denial of an income tax exemption for ocean pearl button manufacturers by the Puerto Rican Government on the ground that the industry has no potential for expansion. The denial of the tax exemption is stated to represent a "strange contradiction" to the approval by the Administrator of an increase in the minimum wage (Pets' Br. pp. 13, 14). The erroneous assumption in this statement is that unless an industry is deemed capable of expansion, any increases in the minimum wage will cause substantial curtailment of employment. While an expanding industry presumably is in a better position to increase wages, such increases are not necessarily precluded by the fact that the market for the industry is at a stable or even a declining level. The cost and price structure are factors of even more pertinence than the prospects of expansion. The expansion potential of the Puerto Rican pearl button industry is therefore not a vital factor in determining whether the minimum wage should be raised. It is nevertheless interesting to note that there has been expansion in this industry in Puerto Rico in the last several years as a result of the establishment of Manati Pearl Works, Inc.

the complexities of the problem, realization of the statutory policies, and responsible treatment of the uncontested facts." *Securities and Exchange Commission v. Chenery Corp.*, 332 U. S. 194, 209. As the Supreme Court stated in the *Chenery* case, in reviewing an administrative order the "wisdom of the principle adopted is none of our concern. * * * Our duty is at an end when it becomes evident that the Commission's action is based upon substantial evidence and is consistent with the authority granted by Congress" (332 U. S. at 207). In stating this view, the Court was simply repeating a principle to which it has long adhered. See *National Broadcasting Co. v. United States*, 319 U. S. 190, 224; *Gray v. Powell*, 314 U. S. 402, 411; *American Telephone & Telegraph Co. v. United States*, 299 U. S. 232, 236; *Securities & Exchange Com. v. Central-Illinois Corp.*, 338 U. S. 96, 126 and *Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474, 488.

In the several cases concerning wage order proceedings under the Fair Labor Standards Act which this Court has decided, it has been pointed out that the conclusions of the Administrator "will not be lightly disturbed" and that petitioners "cannot support their case upon review by merely showing another inference" *National Assn. of Wool Mfrs. v. Fleming*, 74 App. D. C. 223, 225, 228, 122 F. 2d 617, 619, 622. An industry committee, composed in part of employers and employees in the industry, on the basis of their careful consideration of a voluminous record of evidence taken at public hearings where all interested parties had the right to appear, recommended unanimously a minimum wage rate, which the Administrator in turn carefully considered in the light of the statutory standards and accepted only after holding further public hearings. Petitioners have done nothing more than suggest other inferences from those drawn by the Administrator. They point to nothing in the record which supports the view that a 54-cent minimum wage rate would curtail employment opportunities. We submit that under these circumstances, this Court's admonition in *Southern Garment Mfrs. Assn. v. Fleming*, 74 App. D. C. 228, 238, 122 F. 2d 622, 632 that "a court * * * should hesitate long before nullifying" the Administrator's action is especially apposite here.

II. The wage order is not invalidated and no reversible error was committed by the failure to disclose confidential sources of an insubstantial amount of economic information not relied upon by the Administrator nor needed to sustain the order

Petitioners claim that the Administrator's hearing was incomplete and unfair and that reversible error was committed because of the failure to reveal the sources of certain information contained in the economic report prepared by the Wage and Hour Division of the Department of Labor which was submitted in evidence. The information in question related to the production costs of mainland producers and comprised only two pages of a fifty-nine page economic report (R. 36A-37A, 39A).

Contrary to Petitioners' assertion, there is no indication that the Administrator relied upon this inconsequential part of the report at all, and it was plainly not needed to sustain the order. On the record as a whole it is plain that this particular data had only a minor and indirect, if any, bearing on the Administrator's findings and conclusions, and it does not appear that the Administrator's decision depended on it at all. It was certainly not crucial or necessary to the decision to approve the wage order, which as shown in Point I, was amply supported by other substantial and more significant evidence. Moreover, we submit, that the admission of this kind of economic evidence, without disclosure of the confidential sources and without cross-examination, is entirely appropriate in a rule-making or legislative proceeding where the nature of the Administrator's task requires evaluation of a wide variety of economic factors and the exercise of judgment on the relative weight to be given any particular factor.

The findings and opinion of the Administrator show that, entirely apart from the data in question, the Administrator specifically found that the 54-cent rate is the highest rate which would not substantially curtail employment (R. 214A). This finding rested on the evidence in the entire record as a whole, and as shown in Point I of this brief, was supported by substantial evidence without reference to the data in question. There

is no mention whatsoever in the findings and opinion of the Administrator of the data about which Petitioners are complaining, and there is no indication that it had any substantial relevance to this basic finding.

Petitioners are plainly in no position to contend that the rate should be lower than 54 cents because it was unnecessary to set it at 54 cents in order to protect industry in the United States, if, in fact, the 54-cent rate represents the highest minimum rate that does not substantially curtail employment opportunities. To contend otherwise is, in effect, to contend that Puerto Rican industry is entitled to wage rates lower than those required by the wage order provisions of the Act so long as they do not accord a competitive advantage to Puerto Rican industry. This ignores the primary purpose of the wage order proceedings under the Act—"to reach as rapidly as is economically feasible without substantially curtailing employment the objective" of the 75-cent minimum (Section 8 (a)).

As this and many other courts have recognized, even if the admissibility of this data without disclosure of the sources was error, "the admission of irrelevant or incompetent matter before an administrative agency does not constitute reversible error, if there is substantial evidence in the record to sustain the agency's determination," *Sisto v. Civil Aeronautics Board*, 86 App. D. C. 31, 35; 179 F. 2d 47, 51. See also *Willapoint Oysters v. Ewing*, 174 F. 2d 676, 690 (C. A. 9), certiorari denied, 338 U. S. 860, rehearing denied, 339 U. S. 945; *Consolidated Edison v. National Labor Relations Board*, 305 U. S. 197, 229-230. In the *Sisto* case this Court held that "where there is reliable, probative and substantial evidence, any findings, conclusions, and orders based thereon will be sustained even though unreliable, nonprobative, and unsubstantial evidence was allowed in by the examiner." The admission of incompetent or improper evidence, said the court, cannot be said to prejudice the Petitioners "un-

less it be shown that the Board relied on it," and where the administrative agency itself "in its findings, conclusions and orders took no notice thereof and in no way relied on them or even mentioned them" but "found substantial grounds *aliunde* for supporting its order" (*ibid.*), there is no reversible error. That is precisely the situation in the instant case, even if it be assumed that the evidence was improperly admitted or considered.

This principle has been applied specifically with respect to restrictions placed on cross-examination by reason of nondisclosure of confidential information. See *Cia Mexicana de Gas v. Federal Power Commission*, 167 F. 2d 804, 806-807 (C. A. 5). In the *Cia Mexicana* case, petitioners asserted that they were denied a full and fair hearing by reason of limitations imposed on the testimony of an employee of the Mexican Government which prevented cross-examination. The court pointing out that since the statements and opinion of the Commission indicated that the evidence in question "was given little or no weight and that the conclusion of the Commission was based upon a full consideration of the evidence as a whole and was entirely supported by it," the admission of evidence not subject to cross-examination, even if it were error, was not of such a prejudicial character as to make the hearing unfair. 167 F. 2d at 807.

The right to a hearing does not import the right "to refute—item by item" or "a right to confront every informant." See *United States v. Nugent*, 346 U. S. 1, at 7. Particularly in cases where the public interest requires nondisclosure of confidential informants and sources, the proceedings are not rendered invalid or unfair by such nondisclosure in the absence of a showing that the undisclosed information is essential to the conclusion reached and that substantial interests of a private litigant have been prejudiced by the nondisclosure. *Scher v. United States*, 305 U. S. 251; *United States v. Reynolds*, 345 U. S. 1; see also *United States v. Gray*, 207 F. 2d

237, 241 (C. A. 9); *Shore v. United States*, 60 App. D. C. 137, 140; 49 F. 2d 519, 522, certiorari denied, 283 U. S. 865.

Even if the data in question had been of more substantial significance, we submit that Petitioners' objection is untenable. The provision in Section 7 (c) of the Administrative Procedure Act for "such cross-examination as may be required for a full and true disclosure of the facts" does not "confer a right of so-called 'unlimited' cross-examination. Presiding officers will have to make the necessary initial determination whether the cross-examination is pressed to unreasonable lengths by a party or whether it is required for the 'full and true disclosure of the facts' stated in the provision. * * * In many rule making procedures where the subject matter and evidence are broadly economic or statistical in character and the parties or witnesses numerous, the direct or rebuttal evidence may be of such a nature that cross-examination adds nothing substantial to the record and unnecessarily prolongs the hearings" H. R. Rep. p. 37 (Sen. Doc. p. 271, quoted in the Attorney General's Manual on the Administrative Procedure Act, p. 78). Section 7 (c) of the Administrative Procedure Act was not intended to change the "substantial evidence rule" as developed by the courts. As stated in the Attorney General's manual, the requirement of "reliable, probative, and substantial evidence" simply "restates the present law" (Manual p. 76, Davis Administrative Law, 454-455, 458-460). This would include, we submit, "the kind of evidence on which responsible persons are accustomed to rely in serious affairs." *National Labor Relations Board v. Remington Rand*, 94 F. 2d 862, 873 (C. A. 2), certiorari denied, 304 U. S. 576; *Ellers v. Railroad Retirement Board*, 132 F. 2d 636, 639 (C. A. 2).

The production costs information in question in the instant case was obtained by well-established methods of securing economic statistical data on competitive business conditions under a pledge of official confidence, which is frequently the only practicable way in which such information can be elicited. It is, for example, the usual method followed by the Bureau of Labor Statistics of the Department of Labor whose information has been extensively used in wage negotiation and wage deter-

mination proceedings, both public and private. It is clearly the kind of evidence on which responsible persons "are accustomed to rely in serious affairs." Reliance on information so secured is particularly appropriate in the type of rule-making or legislative hearing here involved. See *Opp Cotton Mills v. Administrator*, 312 U. S. 126 at 155, holding that comparable statistical studies constituted substantial evidence in support of the Administrator's wage-order findings, and that "the weight to be given to them and the inferences to be drawn from them were for the Administrator and not the courts."

The right of cross-examination granted by Section 7 (c) "is not intended to disturb the existing practice of submitting technical written reports and analyses of material gathered in field surveys and other devices appropriately adapted to the particular issues involved in specialized proceedings. Whether the agency must in such cases produce the maker of a report depends, as it does under the present law, on what is reasonable under all the circumstances." See *Summary and Analysis of the Administrative Procedure Act* by the Bureau of National Affairs, p. 25 (1946). Where, as in the instant case the Administrator is performing a rule making or legislative function and his expert and informed judgment must enter into the decision, the danger that any parties interested will be prejudiced by limiting detailed cross-examination of such statistical data is at a minimum and is outweighed by the practical considerations that the hearings not be unnecessarily prolonged and that the Administrator not be deprived of the undoubted benefits of such data. This is the very type of data on which the Administrator in proceedings of such a legislative character may be expected to exercise a sound discretion in judging its probative value and the relative weight to be attached to it.

The Supreme Court itself has analogized the administrative function in wage order proceedings to the President's function in raising or lowering tariffs, stating that the wage order function under the Fair Labor Standards Act "is no less an exercise of the legislative function than was the Tariff Act of 1922 authorizing the President to raise or lower tariff duties" where the determination was "to be based upon a variety of relevant fac-

tors, some specified and others not, for which the statute prescribed no relative weight." *Opp Cotton Mills v. Administrator*, 312 U. S. at 146, citing *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294. The *Norwegian Nitrogen* case presented a question quite similar to the one here involved, namely, the right of a private party in a quasi legislative hearing to disclosure of the sources of information submitted by a governmental agency regarding the cost of production and details of the business of particular manufacturers who had made such information available to the agency inspectors in confidence. Although by express statutory provision interested private parties were granted the right to a hearing on proposed changes in tariff rates, and although the plaintiff in that case would be adversely affected by the proposed change in tariff rates, the Court unanimously ruled that this did not entitle the private party to disclosure of information as to the costs of production and other details of the business of particular manufacturers, publication of which would reveal the identity of the manufacturers and might prove useful to competitors, where such information was secured by public officials under a pledge of secrecy. Posing the question whether the right to a hearing meant "that every producer or importer affected by a tariff may explore at will the data collected by the Commission * * * in the business of any other person similarly affected, and may cross-examine investigators and competitors upon the data thus laid bare?" (288 U. S. at 303), the Court found it "hard to believe that [Congress] intended every member of the public affected by an increase or decrease of the duty to inspect and copy all the records and data collected by the Commission, and to cross-examine the investigators as well as the producers or importers appearing at the hearing" (288 U. S. at 307). The right to a hearing, ruled the Court, "does not include a privilege to ransack the records of the Commission, and to subject its confidential agents to an examination as to all that they have learned" (288 U. S. at 319).

The case of *Powhatan Mining Co. v. Ickes*, 118 F. 2d 105 (C. A. 6), on which petitioner relies, is distinguishable in at least two crucial respects: (1) the proceeding there involved

was not, as in the instant case, solely for the purpose of quasi-legislative rule making, but was more in the nature of an adjudicative and adversary proceeding instituted by private parties seeking an exception from a general regulation which had already been issued, so that the administrative decision there was for the purpose of adjudicating specific claims; and (2) the statistical evidence in question in the *Powhatan* case did not, as in the instant case, have only an incidental or indirect bearing on the decision to be made, but was crucial to the decision and substantial reliance admittedly was placed upon it (118 F. 2d at 107-109).

The distinction between "legislative" and "adjudicative" facts is a well established one and it has long been recognized that the degree of procedural protection through the right of cross-examination may depend upon whether the administrative agency is dealing with facts of a legislative or of an adjudicative character. See *Davis on Administrative Law* (1951) pp. 497-499. Compare the *Powhatan* decision with *Norwegian Nitrogen Co. v. United States* discussed *supra*, p. 30. "The procedural protection required for adjudicative facts is normally greater than that required for legislative facts, as judicial attitudes show." *Davis*, at 499. Moreover, stricter procedural protection is required for "facts directly affecting the decision than for background * * * or for those that bear only obliquely on the decision" (*id.* at p. 498). Two principal considerations in determining the need or usefulness of cross-examination are (1) "the legislative or adjudicative character of the facts" and (2) "the direct or remote effect of the facts on the decision" (*ibid.*). The information in question in the instant case is obviously "legislative" in character and bears only indirectly or obliquely on the decision to be made. This is precisely the situation in which "cross-examination is frequently not only unnecessary * * * but affirmatively objectionable because of its awkwardness, as the experience of such agencies as the Wage and Hour Division and of the Food and Drug Administration rather clearly shows." See *Davis*, *id.* at 498, fn. 71, where Davis quotes from the Attorney General's Committee Monograph on Administrative Procedure under the Fair Labor Standards Act as follows:

* * * a major stumbling block to the free utilization of available information has been cross-examination * * *. [The] insistence upon cross-examination * * * has tended to lengthen and clog the record. A reading of the records of wage-order hearings discloses lamentably few nuggets in the battle of lawyers' wits. One need only read through the more than 100 pages devoted to an attorney's endless cross-examination of an economist * * * to realize that cross-examination may not be the best method of elucidating facts (p. 38).

When there is added to all of these considerations the fact that disclosure of confidential sources of economic information such as is here in question would have the effect of drying up those sources and seriously hampering the efficiency of important governmental functions dependent on such sources, we submit that Petitioners' objection is plainly without merit.

III. There is no merit in the contention that the committee report was improperly signed

Petitioners claim that it was error for the Administrator to accept the Committee's report because it was signed by two members of the Committee after they had resigned. It is undisputed that these two members, *before their resignation*, had participated in the formal unanimous vote to recommend the 54-cent wage order at the Committee meetings attended by all nine members on July 1, 1952 (R. 94A-95A). It is also undisputed that all nine members, seven of whom were at the time unquestionably still members, signed the report subsequently filed with the Administrator. Thus it is plain that, apart from the signatures of the two members in question, the report was properly approved and signed by a majority of the Committee. This plainly is sufficient to meet the statutory requirements, since the statute provides that "two-thirds of the members of an industry committee shall constitute a quorum" and that "the decision of the Committee shall require a vote of not less than a majority of all its members" (Section 5 (c)). Moreover, there is no statutory requirement for *signing* of the report. The statute simply provides that the Com-

mittee shall "file" its report with the Administrator (Section 8 (d)). Thus, even if it be assumed that the two resignees were technically not members of the Committee qualified to sign the report, the report was nonetheless signed and filed by not less than a majority of all its members.

Petitioners, apparently recognizing that the statute prescribes no requirement for signing the report, purport to rely upon the Administrator's regulation providing that "a copy of such report shall be signed by each member of the Committee who approves it * * *." Apart from the fact that this regulation does not in terms require that the signatures be affixed at any particular time or that the signers be technically members at the time of signing, more than a majority of the members signed the report at a time when they were still members. Obviously this is sufficient to meet the Administrator's regulation since undeniably it would have been sufficient if the two resignees had not approved or signed the report at all. The triviality, if not absurdity, of Petitioners' objection is evident from the fact that the report would have been plainly unobjectionable, and signed in strict accordance with the literal requirements of the regulation, if the two resignees had dissented and therefore not signed it.

We doubt that Petitioners are seriously urging this hyper-technicality inasmuch as it is not even mentioned in its assignment of errors specified in the "Petition for Review" (R. 5A-7A). Plainly it is a purely technical objection and if there was any error at all there is no claim or indication that anyone was misled or prejudiced by it. At most it was a harmless error and should therefore be disregarded. See Section 10 (e) of Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. 1009 (e); *National Labor Relations Board v. J. S. Popper, Inc.*, 113 F. 2d 602, 603-604 (C. A. 3); and *Union Starch and Refining v. National Labor Relations Board*, 186 F. 2d 1008, 1013 (C. A. 7), certiorari denied, 342 U. S. 815.

CONCLUSION

The wage order of the Administrator should be affirmed.
Respectfully submitted.

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
Chief of Appellate Litigation,

JOSEPH M. STONE,
Attorney,
United States Department of Labor,
Washington 25, D. C.

JULY 1954.

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APPENDIX

EXTRACTS FROM TRANSCRIPT OF HEARINGS BEFORE INDUSTRY COMMITTEE AND ADMINISTRATOR NOT CONTAINED IN PRINTED RECORD

Tr. 100-101 Witness FICKETT. Well, Mr. Chairman, I couldn't give you any actual figures because I don't know, or any percentages, but I do know that within the past year or more, let us say, the trend has been more and more to the use of trochus buttons on men's shirts and some mother-of-pearl as against plastic, perhaps due to the advertising campaign that has been carried on in the United States by the ocean pearl people, and perhaps because it gives them a better selling argument.

Tr. 153-154 Mr. JUDGE. Did I understand you to say, Mr. Fickett, that the competition from plastics is now decreasing rather than increasing? Witness FICKETT. No; I wouldn't say that it is decreasing. I would say it's about the same as it was.

Mr. JUDGE. I was under the impression that now that the markets are somewhat more competitive, several shirt manufacturers who had used plastic had gone back to pearl buttons. Witness FICKETT. That's right. I would like to correct that; I was thinking of the industry as a whole. But in the shirt trade, for example, I think there has been more of the trend to the use of ocean pearl buttons on, for example, men's shirts. There is only one large shirt manufacturing company that I know of that has pretty much its full line still plastic, because the competition in the shirt business, I understand, is pretty keen and when a man can advertise his shirts to his customers or consumers generally as being trimmed with ocean pearl but-

tons, he thinks he has a good selling point, and I think it has induced some shirt people to go over to the ocean pearl buttons.

Chairman SNYDER. What is the selling point besides the pretty name, mother-of-pearl? Does it last longer, look better? Witness FICKETT. An ocean pearl button is an attractive button. It has a nice luster. It's a good utility button. It's all right. I'm not here to tell you that it's any better than a fresh water button.

Chairman SNYDER. It's better than the plastic, isn't it? You share that? Witness FICKETT. Let the plastic people speak for themselves on that.

Chairman SNYDER. They all have their virtues, but the fact is that the shirt people are now switching to the mother-of-pearl? Witness FICKETT. I would say ocean pearl, which would include trochus.

Chairman SNYDER. It seems to have some appeal to the buying public. Witness FICKETT. Yes; it does, and the ocean pearl manufacturing industry on the mainland has done a pretty good job, I think, in industry advertising campaigns over the last couple of years—three years in fact.

Tr. 421. TABLE 10.—*United States production of fresh water and ocean pearl buttons, by States, 1950*

Item	Gross	Value
Fresh water pearl buttons: ¹		
Iowa.....	4, 489, 381	\$3, 703, 220
New York, Pennsylvania, Missouri.....	450, 809	371, 555
Total.....	4, 940, 190	4, 074, 775
Ocean pearl buttons: ²		
Connecticut.....	1, 266, 444	1, 909, 112
New York.....	1, 178, 469	1, 638, 560
New Jersey.....	1, 732, 267	2, 486, 713
Pennsylvania, Maryland.....	1, 566, 192	3, 128, 810
Iowa.....	60, 269	75, 823
Total.....	5, 803, 641	9, 239, 018

¹ Mussel shell products were manufactured in 11 plants in Iowa, 2 in New York, and 1 plant each in Pennsylvania and Missouri. Mussel shells purchased during the year amounted to 10,676 tons, valued at \$406,858 to the fishermen. Shells were taken in 7 states in the Mississippi and the Great Lakes region. The producing States in the order of their importance were: Tennessee, which contributed 38% of the total quantity; Kentucky, 27%; Alabama, 15%; Arkansas, 11%; Indiana, 7%; Illinois and Iowa, 2%.

Source: United States Department of the Interior, Fish and Wildlife Service, 1950.

Tr. 485. Table showing variation in total employment, years 1949-52

	1949	1950	1951	1952
January.....	176	220	277	190
February.....	178	232	257	191
March.....	185	264	255	208
April.....	177	262	227	203
May.....	162	255	210	188
June.....	156	276	215	-----
July.....	140	285	188	-----
August.....	139	282	171	-----
September.....	167	282	159	-----
October.....	179	288	175	-----
November.....	194	305	187	-----
December.....	203	304	198	-----
	12+2,056	12+3,255	12+2,519	5+980
Average.....	171	271	210	196

Tr. 490 Red Star Button Co., Inc., profit and loss statement, Jan. 1-Dec. 31, 1948

Net sales:

Gross sales.....	\$726,761.69
Less returns and allowances.....	21,486.49
	<u>\$705,275.20</u>

Deduct cost of goods sold:

Inventories at beginning of period.....	\$120,502.22
Purchases.....	620,345.75
Freight in.....	3,294.60
	<u>744,146.57</u>
Less inventories at end of period.....	135,270.06
	<u>608,876.51</u>

Gross profit from sales.....	96,398.69
Deduct selling and administrative expenses.....	80,444.43

Net profit from sales.....	15,954.26
Deduct net other expenses.....	11,313.44

Net profit—before provision for Federal income tax....	4,640.82
Deduct—provision for Federal income tax.....	1,080.07

Net profit—for year ended Dec. 31, 1948.....	3,560.75
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Above profit and loss statement per audit report of Sparrow, Waymouth & Co., certified public accountants, New York, N. Y.

Tr. 491 *Red Star Button Co., Inc., profit and loss statement, Jan. 1-Dec. 31, 1949*

Net sales:

Gross sales.....	\$665, 446. 61	
Less returns and allowances.....	20, 922. 89	
		\$644, 523. 74

Deduct cost of goods sold:

Inventories at beginning of period.....	\$135, 270. 06	
Purchases.....	530, 508. 10	
Freight in.....	2, 566. 84	
		668, 345. 00
Less inventories at end of period.....	137, 621. 71	
		530, 723. 29

Gross profit from sales.....	113, 800. 45
Deduct selling and administrative expenses.....	88, 727. 31

Net profit from sales.....	25, 073. 14
Deduct net other expenses.....	9, 436. 15

Net profit—Before provision for Federal income tax.....	15, 636. 99
Deduct—provision for Federal income tax.....	3, 623. 01

Net profit—for year ended Dec. 31, 1949.....	12, 013. 98
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Above profit and loss statement per audit report of Spencer, Waymouth & Co., certified public accountants, New York, N. Y., Wilbur A. Smith, certified public accountant, New York, N. Y.

Tr. 492 *Red Star Button Co., Inc., profit and loss statement, Jan. 1-Dec. 31, 1950*

Net sales:

Gross sales.....	\$1, 062, 739. 01	
Less returns and allowances.....	25, 022. 30	
		\$1, 037, 716. 71

Deduct cost of goods sold:

Inventories at beginning of period.....	137, 621. 71	
Purchases.....	941, 629. 28	
Freight in.....	3, 491. 14	
	1, 082, 742. 13	
Less inventory at end of period.....	211, 240. 10	
		871, 502. 03

Gross profit from sales.....	166, 214. 68
Deduct selling and administrative expenses.....	129, 347. 15

Net profit from sales.....	36, 867. 53
Deduct net other expenses.....	14, 807. 09

Net profit—before provision for Federal income tax..	22, 060. 44
Deduct—provision for Federal income tax.....	5, 226. 85

Net profit for year ended Dec. 31, 1950..... 16, 833. 59

Above profit and loss statement per audit report of Wilbur A. Smith, certified public accountant, New York, N. Y.

Tr. 647. Mr. FELDMAN. Q. Is there any way you could get increased production at this time through any method whatsoever so as to enable you to absorb the cost of increases that this proposed order might entail? Mr. OETTING. A. In Puerto Rico?

Mr. FELDMAN. Q. Yes. Mr. OETTING. A. We have installed all the modern mechanical appliances that are known to the industry in an effort to increase productivity. I know of no further means that we could adapt to achieve that end.

Tr. 740 *Red Star Manufacturing Co., Inc., analysis of average number of employees and average hours worked per week from January 1948 through July 1952.*

Year	Average weekly payroll	Average hourly earnings	Average total man-hours per week	Average number workers	Average man-hours per worker per week
1948.....	4, 107. 53	50¢	8, 215	246	33. 4
1949.....	2, 976. 07	50¢	5, 950	173	34. 4
1950.....	4, 950. 91	53¢	9, 340	272	34. 4
1951.....	3, 606. 16	58¢	6, 218	210	29. 6
1952.....	3, 694. 68	60¢	6, 158	191	32. 2

Tr. 743-744. *Manati Pearl Works, Inc., 52 McKinley Street, Manati, P. R., analysis of average weekly man hours during period of November 1949 through January 1952*

Date of payroll	Man-hours	Employees	Average man-hours per week
1949			
Nov. 4.....	5,975	170	35
Nov. 11.....	4,966¾	168	29½
Nov. 18.....	5,690¾	170	33
Nov. 25.....	4,805¼	167	28¾
Dec. 2.....	6,404	172	37¼
Dec. 9.....	6,709½	180	37¼
Dec. 16.....	6,514	182	35¾
Dec. 23.....	7,074½	190	37¼
Dec. 30.....	3,157½	161	19¾
1950			
Jan. 5.....	298	12	24¾
Jan. 6.....	513	14	36¾
Jan. 13.....	5,447½	174	31¾
Jan. 20.....	6,937	192	36¾
Jan. 27.....	6,986½	186	37½
Feb. 3.....	6,651	183	36¾
Feb. 10.....	6,543¾	175	37¾
Feb. 17.....	6,811¾	184	37
Feb. 24.....	6,347¾	175	36¼
Apr. 7.....	5,186½	180	28¾
Apr. 14.....	6,886¾	181	38½
Apr. 21.....	6,107	176	34¾
Apr. 28.....	6,664¾	182	36¾
Tr. 744 1951			
Jan. 12.....	2,930¾	160	18¾
Jan. 19.....	6,580	204	32¼
Jan. 26.....	5,655¾	151	37¾
Feb. 2.....	7,084½	198	35¾
Feb. 9.....	5,490	149	36¾
Feb. 16.....	5,112	147	34¾
Feb. 23.....	4,234	149	28¾
July 6.....	4,406¾	171	25¾
July 13.....	5,113	171	29¾
July 20.....	4,840¼	169	28¾
July 27.....	4,575	166	27½
Dec. 7.....	5,880¾	164	35¾
Dec. 14.....	5,660¾	162	34¾
Dec. 21.....	6,268	166	37¾
Dec. 28.....	4,609¾	163	28¾
1952			
Jan. 4.....	262	12	21¾
Jan. 11.....	145½	5	29½
Jan. 18.....	5,808½	163	35¾
Jan. 25.....	5,962¾	165	36¾
Feb. 1.....	5,658¾	164	34½

